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Supreme Court of the United States.

OCTOBER TERM, 1892.

UNITED STATES, APPELLANT,
v.
COLTON MARBLE AND LIME COMPANY AND OTHERS. } No. 862.

UNITED STATES, APPELLANT,
v.
SOUTHERN PACIFIC RAILROAD COMPANY AND others. } No. 863.

UNITED STATES, APPELLANT,
v.
SOUTHERN PACIFIC RAILROAD COMPANY AND others. } No. 921.

UNITED STATES, APPELLANT,
v.
SOUTHERN PACIFIC RAILROAD COMPANY AND others. } No. 922.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES ON REARGUMENT.

WM. A. MAURY,
Assistant Attorney-General.

Supreme Court of the United States.

October Term, 1892.

UNITED STATES, APPELLANT, COSTON MANGLE AND LINE COMPANY AND OTHERS.	No. [illegible]
UNITED STATES, APPELLANT, SOUTHERN PACIFIC RAILROAD COMPANY AND others.	No. [illegible]
UNITED STATES, APPELLANT, SOUTHERN PACIFIC RAILROAD COMPANY AND others.	No. [illegible]
UNITED STATES, APPELLANT, SOUTHERN PACIFIC RAILROAD COMPANY AND others.	No. [illegible]

[illegible]

[illegible] FOR THE UNITED STATES ON REARGUMENT.

STATEMENT OF THE CASE.

[illegible] represent, in its several features, a [illegible] the United States and the Southern [illegible] a corporation of the State of Cal[illegible]

and certain parties claiming to be the grantees of that company, with reference to a large amount of valuable land in the said State near Los Angeles, and lying within the overlapping limits of two intersecting land-grant railroads, the Southern Pacific, already mentioned, and the Atlantic and Pacific, the latter being a corporation created by the Congress of the United States. They are test cases, brought for the determination of the great questions that underlie the whole controversy, but they embrace only an inconsiderable part of the land in dispute. As heretofore, both in the court below and this court, they will, for convenience, be considered together.

These suits may, for the present, be briefly stated to be bills in equity filed by the United States for the purpose of quieting its title, as to part of the land in question, by cancelling certain patents illegally issued in the name of the United States to the Southern Pacific Railroad Company, and as to the residue of said land, *to this day unpatented*, by enjoining the defendants from further asserting title to and cutting timber from the same on the pretext that they have title and ownership by operation of the grant to the said company hereinafter mentioned.

STIPULATIONS AS TO EVIDENCE.

It is convenient at this point to call the attention of the Court to the stipulations in No. 862 (p. 78), No. 921 (p. 121), and No. 922 (p. 216), that these causes shall be heard and determined respectively on the evidence in No. 863 in so far as the same may be relevant and applicable.

LAND-GRANT LEGISLATION.

After this general reference to the nature of the litigation, taken as a whole, it becomes necessary to lay before the court, with sufficient fullness, the land-grant legislation and certain other facts stated in the several bills, which underlie all the cases and on which they all turn, before directing our attention to the particular circumstances which give character and distinctiveness to each case.

Congress, by an act passed on July 27, 1866 (14 Stat., 292), created a corporation called the Atlantic and Pacific Railroad Company, for the express purpose of constructing, equipping, and operating a continuous line of railroad and telegraph from a point at or near Springfield, Mo., thence to the western boundary line of that State, thence to a point on the Canadian River, thence to the town of Albuquerque, on the Rio del Norte, thence to the Colorado Chiquito, *and thence along the thirty-fifth parallel of lattitude* as near as may be found most suitable for a railway route to the Colorado River, "at such point as may be selected by said company for crossing," and thence by "the most practicable and eligible route" to the Pacific; and to promote this great enterprise Congress made a grant of lands to the corporation thus created, the terms of which will be particularly stated further on.

To enhance the success of its main design, and as entirely subsidiary to it, Congress, by section 18 of the same act, made a similar grant of lands to the Southern

Pacific Railroad Company, a corporation created by the State of California, as has been said, which it "*authorized*" to connect with the Atlantic and Pacific Railroad "at such point near the boundary line of the State of California as *they* shall deem most suitable for a railroad line to San Francisco."

This grant to the Southern Pacific road is not directly involved in this litigation, and calls for no further attention on our part.

By an act passed on March 3, 1871 (16 Stat., 573), Congress incorporated the Texas Pacific Railroad Company for the purpose of building, operating, and maintaining a railroad and telegraph line from Marshall, Tex., to San Diego, Cal., by a designated route, and to give this projected road a connection with the city of San Francisco it is provided by Section 23 of the act that "the Southern Pacific Railroad Company of California" is "hereby *authorized*" to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, "*with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July 27, eighteen hundred and sixty-six. Provided, however,* That this section shall in NO WAY AFFECT OR IMPAIR the rights, PRESENT OR PROSPECTIVE of the Atlantic and Pacific Railroad Company, or any other railroad company."

This is the grant on which these cases turn, and its im-

portance is such that we give the section containing it in full:

> That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehichipa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions, as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866.
>
> *Provided, however*, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company.

It is thus perceived that "for the rights, grants, and privileges," and "the limitations, restrictions, and conditions" of the grant, we are expressly referred to the grant to the Southern Pacific Company by the act of July 27, 1866, where we find that the grant to that company was similar to that made to the Atlantic and Pacific Company by that act, and "subject to all the conditions and limitations" imposed on that company and to the same regulations, as to time and manner of construction, as were made obligatory on the Atlantic and Pacific Company.

This makes it necessary to refer, with some particularity, to the terms, conditions, and limitations of the grant to the Atlantic and Pacific Company by the act of July 27, 1866, in so far as they bear on this discussion. (See Appendix.)

Section 2 grants a right of way through the public domain of 100 feet on each side of the road, with the usual accommodations for station-buildings, workshops, etc., with the right to take earth, stone, timber, etc., from adjacent lands for the construction of the road.

Section 3 grants twenty alternate odd-numbered sections of land, not mineral, per mile, on each side of the road in the Territories, and ten such sections per mile on each side of the road in any State whenever on the line thereof the United States have full title not reserved or appropriated in anyway at the time of the designation of the line of definite location. In case of any previous reservation or appropriation of land within the granted limits provision is made for indemnity selections outside of those limits. This section contains a *proviso*: "That if the route of the Atlantic and Pacific road shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act."

Section 4 provides for the issuing of patents to the company as often as a section of 25 miles of the road and telegraph shall have been constructed in conformity to law, and section 6 declares that the President of the United States shall cause the lands to be surveyed for 40 miles in width on both sides of the entire line of road as fast as may be necessary, and that the odd sections granted shall not be liable to sale or entry or preëmption before or after they are surveyed, except by said company.

Section 8 prescribes as conditions of the grant that the work shall be commenced within two years after the President's approval of the act, and that not less than 50 miles per year shall be completed after the second year,

and that the whole line shall be completed and equipped by July 4, 1878.

Section 9 provides a summary remedy for the Government in case of the company's default, and section 12 requires acceptance of the grant in writing, etc., by the company within two years from the passage of the act.

Here, then, we have the terms and conditions of the grant to the Southern Pacific Company by section 23 of the act of March 3, 1871, in so far as it is important to state them in this argument.

As the claim of the United States proceeds partly on the theory that the grant of July 27, 1866, to the Atlantic and Pacific Company took effect as of its date, and, therefore, *left nothing within the overlapping limits for the junior grant to the Southern Pacific Company of March 3, 1871, to operate on*, it is proper to state at this point that it is stipulated in all the cases that the Atlantic and Pacific Company was duly organized and that it accepted the grant in the manner and within the time prescribed by section 12 of the act of 1866 (No. 863, p. 241).

The record shows, as averred in the bill, that by March, 1872, the whole line of definite location of the Atlantic and Pacific road was filed in the General Land Office, and that the same was approved by the Secretary of the Interior on April 11, 1872 (No. 863, pp. 226–231, and p. 523).

It is true that this was done by filing in the Land Office, at different times, several maps, each of which represented a different part or segment of the line of road, and all of which, when taken together, presented one

continuous route, a mode of proceeding which was necessary, unless the commencement of the work was to be delayed until every foot of the route—lying, to some considerable extent, in a wild unexplored country—had been surveyed, which it is not reasonable to suppose was contemplated by Congress.

It should be said, furthermore, that the line of route, as originally located, extended from Springfield, Mo., to San Buenaventura, Cal., and thence north, hugging the coast, to San Francisco, and, as we have seen, had been approved by the proper authority, but, in 1886, the validity of so much of this line of location *as extended from San Buenaventura to San Francisco* was again brought in question before Mr. Secretary Lamar, who, after full consideration, reached the conclusion that the grant ended when the line of the road reached the Pacific coast at San Buenaventura, and, consequently, that the lands withheld from entry between that point and San Francisco should be again thrown open to public entry. But the validity of the line of location between San Buenaventura and Springfield was not shaken or questioned in any way. (No. 863, pp. 499–501.) And it is to be further remarked that the lands all along the line, so far as subject to the grant, had been promptly withdrawn from entry, and so continued to be at the time this controversy arose.

It is conceded that the Atlantic and Pacific Company constructed and completed a part of its road west of Springfield, in the time and manner required by the grant, but wholly failed to build any part of its line of road west of the Colorado River (No. 863, p. 242).

It is not denied that a company calling itself the Southern Pacific accepted, or pretended to accept, the grant of March 3, 1871, on April 3, 1871, and on that day filed a plat of its line of definite location*; nor is it denied that a company bearing that same name built and completed the road called for by the grant of March 3, 1871; but it is a serious controversy in this case whether the company that accepted the grant is, in fact and in law, the same company that pretends to have earned the grant and to which the patents in question were issued. It is claimed in the bill that the Southern Pacific Company, which sprang into being on August 12, 1873, and is the company that built the road which goes by that name, is the result of an amalgamation and consolidation of several roads under the laws of California, *but not at all with the sanction of Congress*, which destroyed the identity of the Southern Pacific Company that existed when the grant was made and accepted, and brought into being an entirely new body corporate.

As the result of the failure of the Atlantic and Pacific Company to build any part of its line of road within the State of California, Congress, on July 6, 1886 (24 Stat., 123), passed an act declaring the company's grant forfeited as to *all* lands "adjacent to and coterminous with

* It has been taken for granted, heretofore, and is so stipulated in the cases (No. 863, p. 242) that the line of definite location of the Southern Pacific road was filed on April 3, 1871, and that the grant took effect on that date, but the records of the General Land Office show that it was only the *general route* of the road that was filed on that date, and that *no line of definite location was ever filed*, the line of *actual construction* being accepted in place of it. It is presumed that, for the reasons stated, and on the authority of the cases cited in the new brief filed for the defendant, Hinkell, in No. 863, by Mr. Merrill, this court will take notice, *ex officio*, of the facts as shown by the records of the Land Department.

the *uncompleted* portions of the main line of said road embraced within both the granted *and indemnity limits*," and that "the same are hereby * * * *restored to the public domain*." (See Appendix.)

As has been already stated, the lands affected by this litigation are in that part of the State of California which lies inside of the intersecting and overlapping limits of the grants of July 27, 1866, to the Atlantic and Pacific Company, and March 3, 1871, claimed by the Southern Pacific Company, the defendant; but as the lands involved do not all hold the same relation to the general controversy it becomes important to state their several predicaments of difference.

No. 862.

In No. 862, *United States* v. *The Colton Marble and Lime Company and others*, the half section of land in suit is situated in Los Angeles County, and, as is expressly stipulated (pp. 78 and 80), is within the *indemnity* limits of the Atlantic and Pacific road and the *granted* limits of the Southern Pacific, and is in the same predicament as the land involved in No. 863, with the exceptions, that *no patent* for the former has ever issued to the Southern Pacific Company, and that it does not fall within any Mexican, Spanish, or other foreign grant. It is also stipulated that the evidence in No. 863 shall be applicable to this case in so far as relevant. Consequently, the stipulated admission in No. 863 that the lands in that suit are south of the designated line of the Atlantic and Pacific Company, and that when the Southern Pacific grant took effect there

were not enough odd sections within both the granted and indemnity limits of the first-mentioned company on that side of its line to give it the granted ten odd sections per mile, is in evidence in this case (No. 863, p. 136). This deficiency, it may be further remarked, was owing to the number of previous grants that had been made by the Mexican and United States governments, respectively.

The defendants in this suit, it should also be added, claim under the Southern Pacific Company as grantees.

No. 863.

As just stated, the lands involved in No. 863, *The United States* v. *The Southern Pacific Railroad Company and others*, are in the same predicament as the half section involved in No. 862, except that the lands in No. 863 have all been *patented to the company* and lay within what were the claimed limits of a Mexican grant on April 3, 1871, when the grant to the Southern Pacific Company of March 3, 1871, took effect by the establishment of the company's line of definite location.

The facts with reference to the Mexican grant which enters into this case, and which, as will be seen, is one of its important features, are, compactly stated, as follows:

In September, 1852, Henry Dalton, Ignacio Palamares, and Ricardo Vejar each filed with the board of land commissioners of California his claim for an undivided third interest in the Rancho San José and some adjacent lands, and prayed that it might be confirmed to him as a valid Mexican grant.

The commissioners, by three several decrees (No. 863, pp. 494, 496, 497), confirmed to each claimant the said grant. From these decrees the Government appealed to the proper United States district court, where the decrees were affirmed. The Government then appealed to the Supreme Court of the United States, but these appeals were subsequently dismissed, leaving the claims and the grant absolutely established as against the United States by the said decrees, which are, consequently, to be taken as the initial points of the discussion of this branch of the litigation.

The said decrees show that the grant was not one of quantity, but by specific boundaries, which are set forth in the decrees; and it further appears that juridical possession was given according to these boundaries.

To give practical effect to these decrees confirming the San José grant, it was necessary that the surveyor-general of California should apply the grant to the earth's surface by identifying thereon its calls and landmarks.

In October and November, 1858, the rancho San José was surveyed by Henry Hancock, deputy surveyor, under direction of the United States surveyor-general, and the survey made by him was approved by the surveyor-general on January 4, 1860 (Rec., 863, p. 390).

This survey gave no little dissatisfaction to the claimants, who appealed to the United States district court for redress, but that court finally determined, in 1867, that it had no jurisdiction (*vide United States* v. *Sepulveda*, 1 Wall., 104), and remitted the subject to the surveyor-general, who, on September 18, 1868, approved *another*

survey of the rancho, known as the Thompson survey, and forwarded the same to Washington for definite action. This latter survey contained considerably more land than the Hancock survey, and the claimants contended, with confidence, that their grant entitled them to all the land included in the Thompson survey; and in this state of conflict the surveyor-general of California, on November 13, 1869, transmitted *both surveys*, with an elaborate report, to the Commissioner of the General Land Office for his action thereon.

On June 17, 1871, the Commissioner of the General Land Office, after thorough consideration, rejected the Hancock survey of San José as incorrect (pp. 420, 429), and this decision was, on appeal, affirmed by the Acting Secretary of the Interior, W. H. Smith, on September 28, 1872 (pp. 442–446).

The Thompson survey was made in August, 1868, and, upon approval, became final, but, nevertheless, the surveyor-general, in 1869, and *eleven years* after the Hancock survey was made, ordered the latter survey to be advertised under the act of July 1, 1864 (13 Stat., 332), but the survey was never approved by the Commissioner of the General Land Office, as required by the said act.

According to the Hancock survey, the San José grant did not include the lands in suit, but according to the Thompson survey it did.

It remains to be stated that the new survey of the rancho directed by the Land Department did not embrace within its lines the lands in question, and that on January 20, 1875, patents were issued to the claimants on the basis of that survey.

It is thus manifest that the boundaries of the rancho San Jose were *sub judice* until January 20, 1875, the date of the patent.

No. 1374 AND No. 1375.

In No. 1374 the bill is filed against the Southern Pacific Railroad Company, D. O. Mills, and Garrit L. Lansing, trustees, and Joseph E. Youngblood, grantees of the company, and in No. 1375 the bill is filed against the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, trustees, and the City Brick Company, Thomas Goss, Edward Simmons, and Albert A. Hubbard, grantees of the company; and as to the status of the lands involved in these suits, it need only be stated that they are situated within the granted limits of both the Southern Pacific and the Atlantic and Pacific roads, that is to say, they lie less than 20 miles distant from the line of definite location of both roads, and that where the two lines of road pass through the lands in question, they follow, as we contend, "*the same general line*" of route, within the meaning of the *proviso* of section 3 of the act of July 27, 1866.

THE PLEADINGS.

It would be unprofitable, as well as tedious, to stop to notice the pleadings and evidence in these cases, further than to say that they were all at issue, and that the interests of the various defendants were identified with those of the Southern Pacific Company, except the defendant [illegible] Hinkell, in No. 863, who claims adversely to that company, under the settlement laws of the United States

(see his answer in No. 863, p. 126). The controversy may be said to be over the law and not the facts, and the points of conflict will be distinctly stated under each head of the argument, with references to the evidence, mostly documentary, out of which those points arise.

HEARING.

The cases were brought on for final hearing and argued before Judges Sawyer and Ross, with the result that the bill in each of the cases was dismissed. In Nos. 862 and 863 the court was of opinion that there was nothing in the terms of the grants to the Atlantic and Pacific and Southern Pacific companies that removed lands within the indemnity limits of the former and the granted limits of the latter from the grant to the latter. On this point the judges were agreed, but on the question in No. 863 as to the effect of the contest before the land officers over the survey of the San José grant that was going on when the Southern Pacific grant took effect on April 3, 1871, the judges were divided in opinion, which, however, did not save the case to the complainant, as the controlling opinion of the circuit judge was that the lands in question were not placed *sub judice* by that contest, but formed a part of the public domain when the Southern Pacific grant took effect.

In Nos. 1374 and 1375 the judges concurred in opinion that there was nothing in the grant to the Atlantic and Pacific Company of 1866 or in the *proviso* of section 23 of the act of March 3, 1871, that prevented the grant contained in that section to the Southern Pacific Company

from taking effect on lands situated within the granted limits of the Atlantic and Pacific road, as fixed by the designated route of said road.

DECREES AND APPEALS.

The decrees were entered on the following dates, namely, on March 6, 1891, in No. 862 (pp. 48, 49), and on the same day in No. 863 (p. 153), on June 22, 1891, in No. 921 (p. 37), and on the same day, in No. 922 (p. 48); and appeals from said decrees were allowed on the following dates, namely, on March 9, 1891, in No. 862 (p. 83), on March 9, 1891, in No. 863 (p. 526), on June 22, 1891, in No. 921 (p. 119), and on June 22, 1891, in No. 922 (p. 214).

It remains to be said, that each of these appeals was allowed during the term in which it was entered.

ASSIGNMENTS OF ERROR.

It is submitted that the decrees in the said cases, respectively, are erroneous and invalid on the following grounds assigned for error in the brief of Mr. Call, filed in this case (pp. 7–11) and repeated here for convenience, that is to say:

(1) In this, that the circuit court erred in holding that the defendants herein, or either or any of them, were the owners of or had any interest in the lands in suit herein and described in the bill.

(2) In this, that the court erred in holding that the defendants herein, or either or any of them, acquired any right or title to said lands under or through the grant and act of Congress of March 3, 1871, contained in section 23 thereof (see 16 U. S. Stat., 573–579), entitled "An act to incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road, and for other purposes."

(3) In this, that the court erred in holding that the Southern Pacific Railroad Company and the Southern Pacific Branch Railroad Company

were lawfully or legally consolidated by the pretended articles dated August 12, 1873, set forth in the amended bill.

(4) In this, that the court erred in holding that the Southern Pacific Railroad Company named in the act of Congress of March 3, 1871, could lawfully transfer, assign, or convey to the Southern Pacific Railroad Company, pretended to be created by the said articles of consolidation and amalgamation of August 12, 1873, the right to construct the railroad from Tehachapa Pass, via Los Angeles, to the Colorado River, provided for in said act of Congress of March 3, 1871, or to authorize in anyway said consolidated company to earn or acquire from the United States any lands along the line of such contemplated railroad.

(5) In this, that the court erred in holding that the United States authorized or consented to the pretended transfer by the Southern Pacific Railroad Company named in the said act of Congress of March 3, 1871, to the consolidated company of August 12, 1873, of the right to earn or acquire the lands in suit herein and described in the bill by constructing a railroad from Tehachapa Pass via Los Angeles to the Texas and Pacific Railroad at or near the Colorado River.

(6) In this, that the court erred in holding that the State of California ever authorized or consented to such pretended and attempted transfer of such right and privilege.

(7) In this, that the court erred in holding that the State of California ever authorized or consented to, or had the power to authorize and consent to, the pretended consolidation of the Southern Pacific Railroad Company and the Southern Pacific Branch Railroad Company, as set forth in the articles of consolidation dated August 12, 1873, and attached to the bill herein.

(8) In this, that the court erred in holding that the Southern Pacific Railroad Company named in the said act of Congress of March 3, 1871, and the defendants herein claiming under that company, did not forfeit all right to these lands by said company entering into said illegal and pretended consolidation of August 12, 1873.

(9) In this, that in view of the stipulation in the record that the said line of railroad from Tehachapa Pass via Los Angeles to the Colorado River was constructed between the years 1874 and 1879, inclusive, the court erred in holding that that line of road was constructed by the Southern Pacific Railroad Company named in said act of Congress of March 3, 1871, which company entered into said articles of consolidation on August 12, 1873.

(10) In this, that the court erred in holding that the United States could not, in this suit, quiet its title to said lands and forfeit all right of the defendants in said lands by reason of said Southern Pacific Railroad Company named in said act of Congress of March 3, 1871, having entered into said pretended and illegal consolidation of August 12, 1873, and procuring the construction of such line of road by such illegal and pretended consolidated company without the consent of the United States.

(11) In this, that the court erred in holding that the United States could not in this suit forfeit all right and claim of the defendants to said lands by reason of the failure of the Southern Pacific Railroad Company named in said act of Congress of March 3, 1871, to construct the line of

road mentioned in said act from Tehachapa Pass via Los Angeles to the Colorado River within the time limited in said act, or at all.

(12) In this, that the court erred in holding that the lands herein were not granted to the Atlantic and Pacific Railroad Company by the act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast" (14 Stat., 292), and that such prior grant, and the acceptance thereof by such company and location of the line, did not operate to except and exclude the lands in suit herein from the subsequent grant of March 3, 1871, to the Southern Pacific Railroad Company.

(13) In this, that the court erred in holding that the line of road located by the Atlantic and Pacific Railroad Company from Springfield, Mo., to the Pacific, under such act of Congress of July 27, 1866, and the line located by the Southern Pacific Railroad Company from Tehichipa Pass via Los Angeles to the Colorado River, located under said act of Congress of March 3, 1871, were not upon the same general line so far as they intersected at the crossing of such two lines.

(14) In this, that the court erred in dismissing the bill of complaint.

(15) In this, that the court erred in refusing to enter a decree in favor of the United States as prayed in the bill.

(16) In this, that the court erred in holding that the lands in suit herein were, on April 3, 1871, at the time the Southern Pacific Railroad Company filed its map of location designating its line of route, public lands of the United States not previously granted, sold, or disposed of, or otherwise claimed.

(17) In this, that the court erred in holding that the lands in suit herein were not forfeited and resumed to the United States by the forfeiture act of July 6, 1886, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast and to restore the same to settlement, and for other purposes."

(18) In this, that the court erred in holding that the lands in suit herein were not forfeited and resumed to the United States by the "general forfeiture act," approved September 29, 1890, entitled "An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes."

ARGUMENT.

It is deemed to be of no small significance in this discussion that the Atlantic and Pacific Company was not only *created* by Congress but *required*, as a condition of its being, to carry forward the enterprise of constructing and operating a transcontinental highway from Spring-

field, Mo., to the Pacific Ocean, assigned to it by the act of July 27, 1866, while on the other hand the Southern Pacific Company was merely "AUTHORIZED" by that act, as a State instrumentality, to connect with the Atlantic and Pacific road, at such point near the boundary line of California as should be deemed most suitable for a railroad line to San Francisco, and was merely "AUTHORIZED" by the act of March 3, 1871, "*subject to the laws of California*," to construct a road from Tehachapa Pass, by way of Los Angeles, to the Texas Pacific road at or near the Colorado River. In other words, it became the *legal duty* of the Atlantic and Pacific Company, on accepting its grant and charter, to build and maintain its road, whereas the Southern Pacific Company had a *mere option* in the premises and was not *bound* to do anything.

So far, therefore, from it being a matter of surprise that the rights and privileges conceded by Congress to this *State corporation* are so guarded and so subordinated to the grant to its own corporation as not to endanger or obstruct the attainment of the important object for which that corporation was instituted, it was to be expected that it would be so.

The Southern Pacific Company, it will be also observed, accepted its two grants with *full notice of their subordinate and secondary character*. It was warned by the act of March 3, 1871, that if it selected a route that was to any extent upon the same general line as that of the Atlantic and Pacific Company a proportionate deduction would be made from the lands called for by the Southern Pacific grant; in short, that in such a contingency the State cor-

poration should be stripped of its grant *pro tanto*, in order to prevent a failure *pro tanto* of the grant to the Federal corporation.

The Southern Pacific Company was *further warned* by the *proviso* of section 23 of the act of March 3, 1871, that its grant by that act "shall IN NO WAY affect or impair the rights, PRESENT OR PROSPECTIVE, of the Atlantic and Pacific Railroad Company, or any other railroad company."

If the language of this *proviso* was exceptional and, it is believed, unprecedented in the history of Congressional land grants, it was made so because Congress intended that the subordination and subjection of the Southern Pacific grant to the Atlantic and Pacific should be *exceptional in its rigor*, so that it should not happen that the Atlantic and Pacific grant would be involved in any entanglement with that of the Southern Pacific, whose line it would probably *intersect* somewhere near the Pacific coast.

To interpret these grants properly we must look at the condition of things that existed in March, 1872, when the intersecting part of its line of route was filed by the Atlantic and Pacific Company, which had begun to build from the eastern end of its road and believed in its ability to complete the work from end to end.

It would seem to be absolutely clear, in the light of the decisions of this court, that the lands covered by the overlap never came within the reach of the Southern Pacific grant of 1871, because the title to them passed to the Atlantic and Pacific Company on July 27, 1866. This was the necessary and inevitable effect of the latter company's location of its route in March, 1872.

The grant to the Atlantic and Pacific Company was a grant in *presenti*, its words being "*that there be and hereby is granted*" (§ 3). In addition to being a present grant, it had the potency of a *law*, and there was no alternative to giving it effect from its date in July, 1866, without a partial nullification of the grant, although it was a float until the line of route was located in March, 1872.

That Congress understood this to be the force and effect of the grant to the Atlantic and Pacific Company seems removed beyond all doubt by the act of forfeiture of July 6 1886 (Appendix), which declares that "ALL LANDS" subject to the grant "which are *adjacent to and conterminous with the uncompleted portions of the main line of said road*, embraced within *both the granted and indemnity limits*," * * * "be, and the same are hereby, declared forfeited AND RESTORED TO THE PUBLIC DOMAIN." It can not be supposed for a moment that Congress had any other idea than that *all the lands lying within the overlap*, whether inside of the granted or the indemnity limits of the Atlantic and Pacific Company, belonged to that company *alone* when forfeited and restored to the public domain. That the executive branch of the Government adheres to the same view is attested by the fact that so much of the land involved in this litigation remains unpatented.

Furthermore, if the act of forfeiture embraced lands which the Southern Pacific Company believed that it owned, it is remarkable that no effort appears to have been made by that company to have an exception in its favor made in the act, which was passed some eight years after the entire completion of the Southern Pacific Branch road

in January, 1878, so that that company might not be unjustly involved in a forfeiture intended for the Atlantic and Pacific Company alone.

No language could be more pregnant with meaning than is the silence and submission of the Southern Pacific Company under circumstances in which it was called upon to speak and protest.

If, then, the effect of locating the route of the Atlantic and Pacific Company on the earth's surface in March, 1872, was to vest the title of the lands in suit in that company as of the 27th day of July, 1866, as was undoubtedly the case under the decisions of this court, it is difficult to comprehend by what legal process the title so vested was cast upon the Southern Pacific Company. The argument does not appear to be advanced by showing that the Atlantic and Pacific Company constructed no road in California, unless it can be also shown that the lands in question, which, be it observed, *were never subject to the Southern Pacific grant*, became, nevertheless, vested in that company after Congress had declared them forfeited to the United States and restored to the public domain by the act of 1886. Nor is it by any means apparent how the judicial department of the Government could, in any event, decree lands to belong to the Southern Pacific Company which Congress has declared by law shall be "*restored to the public domain*," as forfeited by a delinquent grantee.

With these general preliminary observations, we now proceed to consider the several phases of the litigation represented by the group of cases under discussion.

I.

LANDS LYING WITHIN THE GRANTED LIMITS OF BOTH ROADS.

The objections to be first considered under this head are that the Atlantic and Pacific Company never lawfully designated its line of route, (1) because it filed maps, at different times, of segments of its route, (2) because these maps were filed in the office of the Secretary of the Interior instead of the General Land Office, and (3) because the route, as originally designated, ran all the way from Springfield to San Francisco via San Buenaventura.

The maps, thus filed, made, together, one continuous line of location, and were approved by the Secretary of the Interior; and the objection that they were filed at different times is entirely overthrown by the very apposite case of *St. Paul R. R.* v. *Northern Pacific R. R.* (139 U. S., 18, 19), where the court say, on the very point:

> It is indeed contended that there is no evidence that any general route was fixed, meaning thereby the general route for the whole length of the road. If this were the fact, which is not conceded, the result would not be changed, as supposed by counsel. The contemplated railroad from Lake Superior to Puget Sound was about 2,000 miles in length, and it was not expected that there should be a general designation of the whole route over this distance before any land should be withdrawn or any rights of the company should attach. The general purpose of the act was accomplished if such reasonable portions of the general route were located as would intelligently guide the officers of the Land Department with reference to the patents to be issued for lands intended for the company. The withdrawal in any case would only extend along the route which was fixed, and a map of which was filed in the Department.

The second objection is entirely confuted by the case of *Butts* v. *Northern Pacific R. R.* (119 U. S., 55, 72), where the grant required that the line of definite location should

be filed in the office of the Commissioner of the General Land Office, but it was really filed in the office of the Secretary of the Interior. The court, however, considered it as a matter of indifference whether the filing was in the one office or the other, the filing in the office of the Secretary being, to all intents and purposes, a filing in the Land Department of the Government.

The remaining and third objection is, that if any line of location at all is to be considered as having been filed, it was one extending from Springfield to San Francisco, which, having been disapproved as to the part running from San Buenaventura to San Francisco, must be taken to have been rejected *in toto*, being an entirety.

This theory is diametrically opposed to the action of the Interior Department, which has treated the line of route from Springfield to San Buenaventura as a valid designation under the law.

This theory is, furthermore, opposed to the well-known principle that where a transaction can not have effect in the manner intended by the parties to it, it will be allowed to operate in some other way, if possible, *quando res non valet ut ago, valeat quantum valere potest. The Kanawha Coal Company* v. *The Kanawha and Ohio Coal Company* (7 Blatch., 391); *Jackson* v. *Bowen* (7 Cowen, 13); *Robinson* v. *Ryan et als.* (25 N. Y., 325); *Ruggles* v. *Barton* (13 Gray, 506); *Grover* v. *Thatcher* (4 Gray, 526); *Hunt* v. *Hunt* (14 Pick., 374); *Freeman* v. *McGraw* (15 Pick., 86). It follows, therefore, that if the line of designated route could not have validity, under the grant, all the way from Springfield to San Francisco, there could have been

no objection to the action of the Department in allowing it operation to San Buenaventura, to which point it could have validity, under the grant.

Assuming now that there was a valid location of the Atlantic and Pacific route on March 12, 1872, it does not admit of question that the lands involved became, by operation of law, subject to the grant of July 27, 1866, *as of that day and date.*

Congressional land grants, as has been remarked, are *laws* as well as grants, and where intended to operate *in præsenti*, like the grant now in question, the effect of locating them on the earth's surface is to invest the grantees with title to the lands granted *from the date of the grant*, and to cut off all rights that seemingly accrued between that date and the date of location which are not excepted from the operation of the grant. And, although this doctrine is so well established, we trust we may be pardoned for quoting what this court said in *Van Wyck* v. *Knevals* (106 U. S., 365): "When the route is thus established the grant takes effect upon the sections granted *by relation as of the date of the act of Congress.* In that sense we say that the grant is one *in præsenti.* It cuts off all claims, *other than those mentioned*, to any portion of the lands from the date of the act, *and passes the title as fully as though the sections had been capable of identification.*" *Schulenburg* v. *Harriman* (21 Wall., 44); *Leav., Law. & Galv. R. R.* v. *U. S.* (92 U. S., 733); *M., K. & T. R. R.* v. *Kans. Pac. R. R.* (97 U. S., 491, 501); *Rlwy. Co.* v. *Alling* (99 U. S., 475); *Van Wyck* v. *Knevals* (106 U. S., 365); *St. Paul & C. R. R.* v. *Winona R. R.* (112 U. S., 720).

The operation of this principle is strikingly shown in *Railroad Company* v. *Baldwin* (103 U. S., 428), where the grant to a railroad company of a right of way through the public domain, without any reservation in favor of rights that might accrue while the grant was a float, was held to subject to the servitude the land of a settler taken up by him, in good faith, *after the date of the grant and before its location.* "The fact that none [*i. e.*, no qualification of the grant] is expressed is *conclusive that none exists*," was the emphatic language of the court.

When *Railroad Company* v. *Baldwin* (*supra*) was decided, it had already been held by this court that priority of location under a junior railroad land grant did not in any way protect land falling within the limits of a senior grant, *subsequently located*, in the absence of any exception covering such land. "It was not within the language or purpose to except from its operation any portion of the designated lands for the purpose of aiding in the construction of other roads," say the court in *M. K. & T. R. R.* v. *Kansas Pacific* (97 U. S., 501).

We look in vain for anything in the legislation involved in this suit indicating an intention on the part of Congress to exempt the Southern Pacific Company from the operation of this general principle. So far from it, we find in the already quoted proviso of section 23 of the act of March 3, 1871, the most explicit command by Congress that the principle shall be enforced with *additional rigor* against that company, for the proviso declares that its grant "*shall in no way affect or impair the rights*, PRESENT OR PROSPECTIVE, *of the Atlantic and Pacific Railway Com-*

pany, or any other company." By these words Congress seems to show a fear or suspicion of this State corporation which the sequel has fully justified.

It is true, the Atlantic and Pacific Company did not earn the right, under the grant, to appropriate the lands in question as absolute owner, and that it lost all its rights in them by forfeiture in 1886; but it is not perceived what relevancy that has to the matter in hand, seeing that the moment the line of its road was located the legal title to the lands granted vested in the company with the same force and effect as if they had been described in the grant by metes and bounds.

If the title, thus vested, was divested before the act of forfeiture in consequence of the defaults of the Atlantic and Pacific Company, what occasion was there for the enactment declaring that the lands were "forfeited and restored to the public domain?" And if, in consequence of such defaults, the subsequent grant to the Southern Pacific Company attached to these lands in some magical way, as yet undefined and unknown, why were they "restored to the public domain" by the act of 1886, *when they belonged to that company?* Are we to infer that the Southern Pacific Company was too indifferent on the subject to utter a protest even against the extension by Congress of the act of forfeiture to its lands?

The act of forfeiture of 1886 must be regarded as a legislative interpretation of the grants in question, and as involving an understanding by Congress that the Southern Pacific Company had no interest whatever in any of the lands covered by the primary and indemnity limits of

the Atlantic and Pacific road, because the forfeiture is declared to extend to all lands "which are adjacent to and coterminous with the uncompleted portions of the main line of said road *embraced within both the granted and indemnity limits.*" Unless, therefore, we impute to Congress the deliberate purpose to deprive the Southern Pacific Company of its property regardless of due process of law, we do not see how there can be a doubt that Congress passed the act of forfeiture without so much as a suspicion that that company *had any rights in the premises whatever.*

The terms of the act of 1886 are clear and sweeping, and it is not perceived that this court could do otherwise than give effect to them according to their plain meaning as the law of the land. Can this court decree that the lands in question shall go to the Southern Pacific Company when Congress has declared that they shall be restored to the public domain?

On June 23, 1888, the Secretary of the Interior, Mr. Vilas, rejected the claim of the Southern Pacific Company to lands lying within the granted limits of the Atlantic and Pacific Company as wholly groundless under the decisions of this court, and opened them to settlement and entry. (6 Land Dec., p. 819.)

The vitality of the grant to the Atlantic and Pacific Company was in no degree impaired by the default of the Company touching the construction of its road in California, *Lake Superior Ship Canal, etc.* v. *Cunningham* (44 Fed. Rep., 820). So long as the United States chose to indulge that company and condone its default under the grant, no person, natural or artificial, had a right to treat

the vested interests of the Atlantic and Pacific Company otherwise than they would have treated them if that company had been punctually performing the conditions of its grant (*Schulenberg* v. *Harriman*, 21 Wall., 62; *Frost* v. *Frostburg Coal Company*, 24 How., 278). Who was to judge when the time had come, if ever to come, for the Southern Pacific Company to step in and appropriate to itself the grant of the Atlantic and Pacific? The opinion of the court below must have been that the Southern Pacific Company had the right to determine that matter for itself in the character of *party and judge*, in violation of a sacred principle of natural justice.

That the Atlantic and Pacific Company took the legal title of these lands on the filing of its line of definite location there can not be a doubt under the decisions of this court. How, then, was that title divested and the Southern Pacific Company clothed with it? By what *due process of law* was the forfeiture and transfer of title made?

The learned district judge, in passing upon Nos. 862 and 863, when before him on demurrers, and after holding that lands within the indemnity limits of the Atlantic and Pacific and the primary limits of the Southern Pacific were subject to the latter's grant, said that if the lands in question in those cases had been within the granted limits of the Atlantic and Pacific *they would have passed to the Atlantic and Pacific Company as of the date of its grant, and been excluded from the grant to the Southern Pacific* (see Record No. 862, p. 56), but the learned judge afterwards held, in Nos. 921 and 922, in which those very conditions existed, that the doctrine thus stated by him in Nos. 862

and 863 was *not* applicable to the cases then before him, because the *Atlantic and Pacific Company had not earned the lands by building the road for which the grant was made!*

It is not to be wondered at that neither of the learned judges of the Circuit Court cited in his opinion the well-known land-grant decisions of this court, for in their zeal to reach what we must presume they regarded as the *justice of the cases* as contradistinguished from *the law*, they were compelled to set their faces against doctrines repeatedly laid down by this court, and to assume to be wiser than the laws they were commissioned to administer—to abandon fixed principles that they might decide *secundum arbitrium boni viri.*

In the face of the decisions of this court, it is contended by the learned counsel for the appellees that the grant to the Southern Pacific Company did attach to the lands in question on the location of its line on April 3, 1871, subject to displacement by any subsequent conflicting location of a line of route by the Atlantic and Pacific Company, and it is admitted that the filing of the latter company's line of route, if valid, did subject the lands lying within the granted limits of both roads to the grant of the Atlantic and Pacific road, but the contention is that when this latter grant was resumed and declared forfeited by Congress the rights of the Southern Pacific Company, under its grant, *reattached* to the lands, and that the whole office and effect of the act of forfeiture declaring them restored to the public domain was to feed the grant thus resuscitated. And to support this novel view, the cases of *St. Paul R. R.* v. *Winona R. R.* (112

U. S., 720) and *Sioux City R. R.* v. *Chicago R'lw'y* (117 U. S., 406) are appealed to. But the conflicting grants in those cases *bore the same date* as well as covered the same land, and the only way to give effect to both grants was to allow each company a moiety of the land, and the most that can be inferred from the *dicta* relied on is that if one grantee forfeited its grant *the other grant would be allowed to have full effect.* But the grants now before the court *were not simultaneous*, and, consequently, the cases relied on have no relevancy. *The* contention of the United States is, that the Atlantic and Pacific Company took *all* the lands in question, but that the Southern Pacific took *none.*

The argument seems to be that it transcends the power of Congress to make a grant of an undesignated part of the public domain, which may, after location by the grantee, operate from its date with precisely the same force and effect as if the grant had accurately described the thing granted.

It is just here that the argument on the other side breaks down.

The attempt to show that the lands in question were ever *in anyway subject to the Southern Pacific grant* is a task much too great for the ingenuity and learning of the counsel who has attempted it.

The author of the grants here involved is the sovereign owner of the land granted. It is not to Coke on Littleton or Cruise's Digest that we go for the law of the grants, *but to the grants themselves*, and when the grantor says that the grant of a float shall take effect from its date

and not the date of its location, the sovereign will must have effect *regardless of consequences.*

Nothing could be more conclusive on this subject than the language of Mr. Justice Field in *Mo., etc., Ry. Co.* v. *Kan. Pac. Ry. Co.* (97 U. S., 491, 497):

> "It is always to be borne in mind, in construing a Congressional grant, that the act by which it is made is a law as well as a conveyance and that such effect must be given to it as will carry out the intent of Congress. THAT INTENT SHOULD NOT BE DEFEATED BY APPLYING TO THE GRANT THE RULES OF THE COMMON LAW, WHICH ARE PROPERLY APPLICABLE ONLY TO TRANSFERS BETWEEN PRIVATE PARTIES. To the validity of such transfers it may be admitted that there must exist a present power of identification of the land, and that where no such power exists instruments, with words of present grant, are operative, if at all, only as contracts to convey. BUT THE RULES OF THE COMMON LAW MUST YIELD IN THIS, AS IN ALL OTHER CASES, TO THE LEGISLATIVE WILL."

A layman reading the brief of the appellees, which might be properly called a new reading upon the land grant statutes, would suppose that the retroactive feature of land grants was an anomaly in the law, instead of being a recent application of a principle which has been commonly employed for ages, which is known at common law as the doctrine of relation, and which, as Maule, J., defined it in *Graham* v. *Furber* (14 C. B., 152), is "*treating a thing as happening at some preceding time.*"

It is impossible to do more than refer to some of the examples at common law of the application of this well-established doctrine.

In *Attorney General* v. *Ponter* (6 Bro. P. C., 486), an act laying a duty on rice, *thereafter to be exported*, received the royal assent on June 27, 1767, and on June 10 of that year the defendants had exported rice. After the act was passed the duty was demanded *upon the prior exportation*, and *it was adjudged to be payable*, by the Irish court of Exchequer. The cause was carried to the House of Lords,

on the ground of the palpable injustice of punishing the party for an act innocent and lawful when it was done, but the decree was affirmed upon the opinion of the twelve judges, *that the statute by legal relation commenced from the first day of the session.* See also on the same point *Latless* v. *Homes* (4 T. R., 660, and Dwarr. Stat., 543). The principle applies also to criminal statutes, and its effect has been to make an act murder, sometimes, which would not have been such but for giving the law retroaction.

In *Pimb's case* (Moore, 196) A enfeoffed B to the use of C. B committed treason before the feoffment, but was not attainted until afterwards, but it was held that by the operation of the doctrine of relation it was precisely the same as though the feoffment had been to a person actually attainted. The decision in this case is peculiarly harsh, for, first, the land went to the Crown by a *constructive relation* and then the Crown was deemed to hold the land discharged of the use, because the Crown can not be a trustee. To her credit be it said, Queen Elizabeth, moved by the hardship of the case, granted the land to the *cestui que* use by patent (Co. Litt., 13*a*, Note 7).

In *Regina* v. *Riley* (Dearsly's Crown Cases, 149) we have an instance of an act of trespass by *unknowingly* carrying off a chattel, *becoming afterwards a felony by relation.*

Under the earlier bankrupt acts in England the title of the bankrupt's assignees related back to the act of bankruptcy, thus overreaching all mesne transactions, however innocent.

And do not our recording statutes all over the land provide that, in certain cases, deeds shall operate from delivery by relation, and not merely from the date of their recording?

And by relation the executor and administrator's title goes back to the decedent's death.

The doctrine of ratification, also, furnishes many examples where the principle of relation operates precisely as it does in land grants.

By the Roman law the birth of a posthumous child annulled the father's will although he knew his wife to be *enceinte*, for by that law a child *in utero* could neither be instituted as heir nor disinherited, and thus we see, that the father was by relation made to die intestate in consequence of an event against which it was impossible for him to provide. (Demangeat, Cours de Droit Romain, tome 1, pp. 617, 618). This example is the more instructive when we remember that with the Romans intestacy was a kind of misfortune, and sometimes a blot on the intestate's memory.

A Roman taken by the enemy became a slave, and from the moment of capture all his rights as a Roman citizen ceased to be operative, but if he returned to his country they revived by the *jus postliminii*, and he was reinstated in them not only for the future *but for the past, and just as if he had never been in the power of the enemy.* (Ortolan Inst., tome 1, p. 127, ed. 1876, Paris.) Here, then, was another class of cases where the doctrine of relation was applied with severity. The returned captive resumed the rights he had left behind him (*post limen*)

utterly regardless of anything that had occurred during his captivity.

It would be a waste of time to argue further in support of the proposition that the land lying within the granted limits of the two companies was absolutely vested in the Atlantic and Pacific Company from the date of the grant, and, therefore, *was never subject to the Southern Pacific* grant, and that, as a corollary, the forfeiture of the Atlantic and Pacific grant inured to the benefit of the United States alone.

II.

LANDS WITHIN THE INDEMNITY LIMITS OF THE ATLANTIC AND PACIFIC AND WITHIN THE PRIMARY LIMITS OF THE SOUTHERN PACIFIC.

This is the *status* of the lands involved in cases numbered 862 and 863.

While the right of the United States to have relief as to these particular lands may not be so obvious as in the case of the lands falling under the preceding proposition, it is believed that the right is as well founded.

Ordinarily, lands lying within the indemnity limits of a grant are not subjected to it by the mere fact of filing the map of definite location. Lands of this class are subsidiary to the grant proper by supplying its deficiencies, but only after the due ascertainment of such deficiencies and the proper selection of other lands in the indemnity limits to supply them. When these conditions exist, land in the indemnity limits becomes subject to the grant, but not before. This, however, is a matter dependent on the terms of the grant in each case, for there is no reason whatever why

Congress may not provide that a land-grant company shall have a paramount inchoate right to all lands within its indemnity limits until its right to any or all of such lands shall have been finally adjusted.

It is not claimed here that there were any indemnity selections to make up deficiencies in the Atlantic and Pacific grant, but it is maintained that the effect of the *proviso* of section 23 of the act of 1871 was to remove these indemnity lands as completely from the Southern Pacific grant as though they had been selected and appropriated by the Atlantic and Pacific Company before that grant took effect. The position of the Government in these cases is very much like that which was occupied by the plaintiff in the case of *Rice* v. *Railroad Co.* (1 Bl., 358), where a struggle was made to have a land grant interpreted according to its meaning and not according to an urgent appeal for justice founded on considerations outside of the grant, or, as Lord Coke expresses it, "according to the right line of law and not according to the crooked cord of private judgment."

In that case it was contended by able counsel that the grant must take effect as a present grant because it used words *in præsenti*, but the court held otherwise, because it said the words of the fourth section of the granting act that "*no title shall vest*" until a continuous line of twenty miles of the road shall be completed, could not be "shorn of their usual and ordinary signification, *except to say that it would be doing great injustice to Congress to hold, notwithstanding the words of the first section, that no title passed to the grantee. Whether the provision be just or unjust, the*

words mentioned are a part of the act, and it is not competent for this court to reject or disregard a material part of an act of Congress, unless it be so clearly repugnant to the residue of the act that the whole can not stand together" (p. 379).

The contest in that case was to have the four words "*no title shall vest*" given their plain sense, against a powerful contention to the contrary, in professed furtherance of an imaginary justice outside of the statute; and the contest in this case is to compel a recognition of the plain intent of Congress in declaring that the grant to the Southern Pacific Company "SHALL IN NO WAY AFFECT OR IMPAIR THE RIGHTS, PRESENT OR PROSPECTIVE, of the Atlantic and Pacific Railroad Company." * * *

Shall these significant and comprehensive words have effect or shall they be smothered by interpretation?

When the grant of 1871 was made to the Southern Pacific Company, the Atlantic and Pacific Company had not filed its map of location, it will be remembered, but it already had a "*present*" right of way through the public lands and a "*present*" grant of lands. It also had a "*prospective*" right to make those grants effective by an act of location, and a "*prospective*" right to make selections of lieu lands to supply deficiencies in its granted limits. Furthermore, the Southern Pacific grant of March 3, 1871, was also subject to section 9 of the act of July 27, 1866, which provides that, in case of the continuance for over a year of "*any breach*" of the conditions of the grant, the United States "may DO ANY AND ALL ACTS AND THINGS WHICH MAY BE NEEDFUL AND NECESSARY TO INSURE A SPEEDY COMPLETION OF THE SAID ROAD." This provision

shows, conclusively, that so far from Congress contemplating that the Southern Pacific Company should take anything by the default of the Atlantic and Pacific Company, it must have intended that, in case of such default, the land granted should be reserved to the United States, to be used by such other instrumentality as Congress might choose to employ to build the transcontinental road, and not left to pass to posterior grantees.

Congress knew the condition of the public lands in California. It knew that, in some quarters in that State, both the Mexican and the United States Governments had disposed of so much land that the indemnity limits of the Atlantic and Pacific Company required protection against a not improbable invasion of them by the Southern Pacific Company to make up for losses caused by an intersecting location of the prior grant of the Atlantic and Pacific Company.

Now, it may be asked whether it is legislation or interpretation to say that the protection of the *proviso* shall not be extended to the indemnity belt, because that would be to make the grant as comprehensive in that particular as in the particular of the primary limits. Has the expounder of the *extraordinary and exceptional language* of the proviso the right to resort to the *ordinary and usual language of land-grant laws* for the purpose of emasculating the *proviso*?

It is only by this restrictive and suppressive mode of interpretation that the surprising conclusion can be reached that the appropriation of these indemnity lands

in no way "affects or impairs" a "prospective" right of the Atlantic and Pacific Company.

It seems almost like an affront to the intelligence of this court to expend argument on so unreasonable a proposition.

In order to fritter away the meaning of the *proviso*, which is evidently a lion in the path of the appellees, their counsel uses his ingenuity in a fruitless attempt to show that the *proviso* was intended merely to insure the retroaction of the grant because when the grant was made this court had not yet told Congress what its land grants meant by the decision in the case of *Mo., etc., R. R. Co.* v. *Kan. Pa. Co.* (97 U. S., 491)!

The counsel can see no application of the *proviso* to lands within the indemnity belt of the Atlantic and Pacific grant, but it may be asked how the Southern Pacific Company could enter the indemnity limits of the Atlantic and Pacific Company for any purpose without, in some way, impairing or affecting "*the present or prospective*" rights of that company within those limits, or without interfering with the rights of the United States under section 9 of the Atlantic and Pacific act? Looking at the plain meaning of the words of this *proviso*, to say nothing of section 9, we think the only conclusion to be reached is that it operated with the force and effect of an exception from the grant to the Southern Pacific Company, especially as it is a stipulated fact in these cases (No. 863, p. 250) that every foot of land in the indemnity belt at the point of overlapping was required to make up deficiences in the granted limits of the Atlantic and Pacific Road at

the date of location, thus rendering it unnecessary for the company to make selections in order to subject the lands to the grant. Says this court, in *St. Paul R. R.* v. *N. Pac. R. R.* (139 U. S., 1):

> As to the objection that no evidence was produced of any selection by the Secretary of the Interior from the indemnity lands to make up for the deficiencies found in the lands within the place limits, it is sufficient to observe that all the lands within the indemnity limits only made up in part for these deficiencies. There was, therefore, no occasion for the exercise of the judgment of the Secretary in selecting from them, for they were all appropriated.

When the Atlantic and Pacific Road was located in March, 1872, it not only supplanted the Southern Pacific Road as to granted but also as to indemnity lands at the point of intersection. This was absolutely necessary to give proper effect to the *proviso*. If the lands in the indemnity belt of the Atlantic and Pacific were not subject to the grant of the Southern Pacific at the time the latter's grant took effect, then no change in their condition afterwards could bring them within the operation of the grant. (*Leavenworth, &c., R. R. Co.* v. *U. S.*, 92 U. S., 733.)

Now, that those indemnity lands could not have been subject to the Southern Pacific grant on April 3, 1871, nearly a year before the Atlantic and Pacific grant was located, is too obvious for discussion. Such a result was made *impossible* by relation when the line of route of the Atlantic and Pacific Road was definitely located on the public domain in March, 1872.

There are two reasons, therefore, for holding that these indemnity lands did not come under the Southern Pacific grant, namely: (1) because all of them were necessary to

make up deficiencies in the granted limits of the Atlantic and Pacific and (2) because it could not be known when the Southern Pacific grant took effect to what extent these indemnity lands would be needed by the Atlantic and Pacific Company.

Congress evidently thought that lands within the indemnity belt of the Atlantic and Pacific grant could not be subject to the Southern Pacific grant or it would not have declared *all* such lands "*forfeited and restored to the public domain.*"

It is an entirely novel idea, it seems to us, that every right of the Atlantic and Pacific Company as to its grant was not as vital and operative up to the act of forfeiture as it was when the grant was accepted in 1866. The unreasonableness of the opposite view is shown, at once, by asking *At what time before the forfeiture did the grant begin to wane and lose vigor?* Certainly its force was unimpaired in 1871, five years after its date, when Congress authorized the grantee to mortgage its road (17 Stat., 19).

But, it may be pertinently asked, is the conduct of this company toward the United States to be determined *collaterally*, as it has been in these cases, every time it suits the purposes of any litigant to contend that at some particular time this company had lost some right under its grant because it was, at that time, in default?

But if it is doubtful whether these indemnity lands passed by the grant of the United States to the Southern Pacific Company the mere existence of that doubt entitles the United States to a decree for the surrender and cancellation of the patents covering these lands, on the well-

established principle that public grants should be construed most strongly against the grantee, and all doubts in them resolved in favor of the Government.

In *Leavenworth, &c., Railroad Company* v. *United States* (92 U. S., 740) the court say: "If rights claimed under the Government be set up against it, they must be so clearly defined that there *can be no question of the purpose of Congress to confer them.* In other words, *what is not given expressly or by necessary implication is withheld.*"

In *Slidell* v. *Grandjean* (111 U. S., 437) the court say:

> It is also a familiar rule of construction that where a statute operates as a grant of public property to an individual or the relinquishment of a public interest, *and there is a doubt as to the meaning of its terms or as to its general purpose, that construction should be adopted which will support the claim of the Government rather than that of the individual. Nothing can be inferred against the State.*

And in *Dubuque and Pacific Railroad Company* v. *Litchfield* (23 How., 88) it is laid down, with reference to a land grant, that "all grants of this description are strictly construed *against* the grantees; *nothing passes but what is conveyed in clear and explicit language*" And this is the doctrine declared in the great cases of *Charles River Bridge* v. *Warren Bridge* (11 Pet., 420), *Providence Bank* v. *Billings* (4 Pet., 514), *Jackson* v. *Lamphire* (3 Pet., 289), and *Rice* v. *Railroad Co.* (*supra*).

The United States demands these lands because they belong to the public domain. If the Southern Pacific Company claims a better right to them under the grant of 1871, it must show that that right is given by words so clear and unequivocal "*that there can be no question of the purpose of Congress*" to confer it. What is not so given *is withheld.*

Now, will it be maintained that the meaning of the *proviso* is clearly with the company as to these indemnity lands, in the face of the opinion of Attorney-General Garland (19 Op., 135) and the repeated rulings of the Department of the Interior *to the contrary?* (See 5 Land Dec., 691; 6 *ib.*, 679, 812; 4 *ib.*, 215.)

The respect which this court pays to the opinions of the Land Department in the interpretation of statutes concerning the public lands (*Hastings and Railroad Co. v. Whitney*, 132 U. S., 366) would seem to require that it should hold, at the very least, that the meaning of the *proviso* in question is not free from doubt.

It follows, therefore, if these views are correct, that the Southern Pacific Company has no right to these indemnity lands, and that the patents held by it should be decreed to be surrendered and canceled.

III.

LANDS THROUGH WHICH THE TWO ROADS HAVE THE SAME GENERAL ROUTE.

A glance at the official map showing the lines of the two roads at and near the point of intersection (No. 863, p. 447, Master's Exhib. 163) shows that for some distance before the lines cross they pursue the same general route, and thus the Southern Pacific grant is brought directly within the operation of the last proviso of section 3 of the act of July 22, 1866, which provides:

> That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, so far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act. * * *

It is claimed for the Government that this is an *express limitation* on the Southern Pacific grant, and requires a withdrawal from the grant of all lands within its limits to the full extent that that road runs on the same general route as the Atlantic and Pacific.

It is true, as the court below remarks, that no such claim is set up in the last amended bill, although set up in former bills, but, on the other hand, it is to be noted that the United States shows a perfect title to the lands in question by conquest and the treaty of Gaudaloupe Hidalgo, and that, as the Southern Pacific Railroad Company *has no patents for the land in question*, but stands on its grant alone, it is not entitled to the benefit of any presumptions, but must prove compliance with its grant to the last particular. This view of the matter seems to obviate completely the technical difficulty raised by the court.

IV.

LANDS WITHIN THE CLAIMED LIMITS OF THE SAN JOSÉ GRANT.

It is a stipulated fact in the case that the lands involved in No. 863 were within the limits of the Rancho San José as defined by the Thompson survey (No. 863, p. 246, par. xxxiii). It is also undisputed that the lands in question were not included in the Hancock survey or the subsequent survey on which the patent was issued. And the court will bear in mind that this San José claim was a grant by boundaries and not by quantity.

The desiño or map accompanying the expediente, and which is referred to in the grant by Governor Alvarado

to Palomares and others (No. 863, p. 412), as well as in the decree of juridical possession (No. 863, pp. 347, 348) and the decrees of the United States district court confirming the grant (No. 863, pp. 495, 496, 498), is declared by the witnesses J. A. Bernal (No. 863, pp. 214–221) and William Moore (No. 863, p. 225) to embrace the lands in question. These witnesses are surveyors acquainted with the locality in which the grant is seated, and their unimpeached testimony gives force and support to the claim that the Thompson survey was a correct location of the San José grant, and not a wild exaggeration of the grant.

The letter of Commissioner Drummond to Surveyor-General Hardenbergh, of June 17, 1871, shows that a vast amount of contradictory testimony was adduced during the prolonged controversy before the Land Department over the Hancock and Thompson surveys, so that it does not admit of doubt that, whatever the merits of that controversy were, it was a controversy carried on *in good faith by parties who were in earnest.*

On the one hand the United States insisted on the correctness of the Hancock survey, while on the other the claimants tenaciously held to the Thompson survey, and it seems absurd to say that, while this contest was being carried on, the lands included in the one survey and excluded from the other were not *sub judice.*

The number of leagues contained within the calls of the grant not being stated, the difficulty of locating the grant on the earth's surface was largely enhanced.

It is clear, therefore, that on April 3, 1871, when the Southern Pacific Company filed its line of definite loca-

tion, there was doubt and uncertainty as to whether the lines of the grant embraced the disputed lands or not.

The field notes of the Thompson survey are given in full in the record (No. 863, pp. 406–410), and, apart from one or two gratuitous and reckless imputations to be met with in the record, there is nothing to impeach the good faith of Thompson and those who assisted him in his work.

There being a discrepancy of some 14,296 acres between the two surveys, the Commissioner of the General Land-Office, Mr. Wilson, on May 8, 1869, ordered a thorough reëxamination of the whole subject by the surveyor-general of California (No. 863, p. 419), after giving thirty days' notice to all parties interested, and on June 17, 1871, Commissioner Drummond, after an exhaustive examination of the subject, in the light of a complete record of the whole controversy before him, which his predecessor, Mr. Wilson, did not have, *rejected*, partially, *the Hancock survey* of San José and San José addition and *ordered a new survey.*

The letter of Commissioner Drummond refers to the great conflict in the testimony as to the places on the earth's surface for which the grant called, and the difficulty in reaching any conclusion as to some of the lines of the grant.

It is desirable, at this point, to refer to the several acts of Congress regulating surveys of Mexican and Spanish grants in California which were in force while the contest over the Hancock and Thompson surveys was going on,

and which enables us to say, with positiveness, that the Thompson survey was the *only valid survey* until June 17, 1871, when Commissioner Drummond ordered the new survey, on which the patent was finally issued.

The Hancock survey of 1858, approved by the surveyor-general for California January 4, 1860, was executed under section 13 of the act of March 3, 1851 (9 Stat., 631), which made it the duty of the surveyor-general "to cause all private land claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same."

On July 1, 1864, Congress passed a statute entitled "An act to expedite the settlement of titles to lands in the State of California" (13 Stat., 332), which provided (section 1), amongst other things, that notice of all surveys and plats made by the surveyor-general of California should be published in two newspapers, and should be open to inspection for ninety days, and that copies thereof should be sent to the Commissioner of the General Land Office, and that they should all be subject to approval of the Commissioner of the General Land Office; and by section 2 of the act it was provided as follows:

> That the provisions of the preceding section shall apply to all surveys and plats by the surveyor-general of California, *heretofore made, which have not already been approved by one of the district courts of the United States for California, or by the Commissioner of the General Land Office: Provided*, That where proceedings for the correction or confirmation of a survey are pending on the passage of this act in one of the said district courts, it shall be lawful for such district court to proceed and complete its examination and determination of the matter, and its decree thereon shall be subject to appeal to the circuit court of the United States for the district in like manner and with like effect, as hereafter provided for appeals in other cases to the circuit court, and such appeals may be in like manner disposed of by said circuit court.

And for the regulation of surveys to be thereafter made it was provided by section 6 as follows:

> That it shall be the duty of the surveyor-general of California to cause all the private land claims finally confirmed to be accurately surveyed and plats thereof to be made whenever requested by the claimants: *Provided*, That each claimant requesting a survey and plat shall first deposit in the district court of the district within which the land is situated a sufficient sum of money to pay the expenses of such survey and plat, and of the publication required by the first section of this act. Whenever the survey and plat requested shall have been completed and forwarded to the Commissioner of the General Land Office, as required by this act, the district court may direct the application of the money deposited, or so much thereof as may be necessary, to the payment of expenses of said survey and publication.

It is manifest that the Hancock survey became immediately subject to section 6 of the act of July 1, 1864, as it had not been approved by "one of the district courts of the United States for California or by the Commissioner of the General Land Office," and could have no validity without compliance with the requirements of that act as to advertising, etc.

The Hancock survey being in this condition, Congress passed another act, on July 23, 1866 (14 Stat., 218), entitled "An act to quiet land titles in California," section 8 of which provides as follows:

> That in all cases where a claim to land by virtue of a right or title derived from the Spanish or Mexican authorities has been finally confirmed, and a survey and plat thereof shall not have been requested within ten months from the passage of this act, as provided by sections six and seven of the act of July first, eighteen hundred and sixty-four, "to expedite the settlement of titles to lands in the State of California," and in all cases where a like claim shall hereafter be finally confirmed, and a survey and plat thereof shall not be requested, as provided by said sections, within ten months after the passage of this act, or any final confirmation hereafter made, it shall be the duty of the surveyor-general of the United States for California, as soon as practicable after the expiration of ten months from the passage of this act, or such final confirmation hereafter made, to cause the lines of the public surveys to be extended over such land, and he shall set off, in full satisfaction of

such grant, and according to the lines of the public surveys, the quantity of land confirmed in such final decree, and as nearly as can be done in accordance with such decree; and all the land not included in such grant as so set off shall be subject to the general land laws of the United States: *Provided*, That nothing in this act shall be construed so as in any manner to interfere with the right of bona fide preëmption claimants.

No survey or plat of the San José claim having been requested it became the duty of the surveyor-general of California to set off the land covered by the claim, and, accordingly, Surveyor-General Upson ordered a survey of the claim by Deputy Surveyor G. H. Thompson, and it is an important fact, shown by the field notes (No. 863, map, pp. 404, 406), that this survey was made "*under instructions*" *from the surveyor-general himself*. The survey thus made by Thompson was approved by the surveyor-general on September 18, 1868 (No. 863, map, p. 404), and by that approval became operative, at once, under the act of July 23, 1866 (*supra*).

Now, after all this had been done, namely, in the year 1869, the surveyor-general of California took the extraordinary and censurable step of advertising the Hancock survey under the act of July 1, 1864, but it *was never approved by the Commissioner of the General Land Office*, as that act required.

Under the legislation above referred to, the Department of the Interior uniformly asserted a reviewing and controlling authority over all proceedings in the office of the surveyor-general of California; and in the face of the letters of Commissioner Wilson, of May 8, 1869 (No. 863, pp. 412 *et seq.*), and Commissioner Drummond, of June 17, 1871 (No. 863, pp. 420 *et seq.*), asserting that reviewing and controlling authority, and showing, as they do, that

the Land Department was in a state of bewilderment as to the proper seat of the grant on the earth's surface, it seems little short of absurd to say that the San José grant was not *sub judice* on April 3, 1871, when the Southern Pacific line of route was designated. If the existence of two surveys, *both ordered by the surveyor-general* at different times and in serious conflict with each other upon the point whether the lands in question here (No. 863) were inside or outside the lines of the San José grant, did not place that grant in the predicament of a claim *sub judice*, we are at a loss to know what meaning to attach to that term.

As we conceive, our position in this particular is fully supported by the well considered cases of *Newhall* v. *Sanger* (92 U. S., 761) and *Doolan* v. *Carr* (125 U. S., 618).

The case of *Doolan* v. *Carr* was ejectment to recover a tract of land in California which had been patented to the Western Pacific Railroad Company under a grant of land by Congress, by an act dated July 1, 1862, and the act amendatory thereof.

The line of route of the road was designated on January 30, 1865, and a withdrawal order as to lands within the primary limits of the road was entered on January 31, 1865.

It was insisted by the defendants that the land claimed was not subject to the railroad grant at the time of its location, but was then claimed to be within the lines of a Mexican grant which was still in dispute between the claimants and the United States.

It is true the Supreme Court of the United States had

adjudged the claim to be valid at its December term, 1860; but in that case, as in the case at bar, the survey ordered by the surveyor-general of California for the location of the grant thus confirmed had caused dissatisfaction because it included the land in dispute. For that reason the survey was set aside by the Secretary of the Interior in the year 1868, and a new survey ordered by the surveyor-general, and executed under instructions from the Secretary of the Interior to confine the claim to two square leagues, to be set off within the outboundaries of the grant. This survey was finally approved by the Secretary of the Interior on June 6, 1871, when for the first time the land claimed in the suit became public land. It lay within the outboundaries of the grant, but was excluded from the approved survey of 1869.

The whole difficulty in the case grew out of a dispute as to the lines of the two surveys, and originated six years after the decree of this court finally establishing the validity of the grant. The language of the court stating the reason on which they held the land in dispute not to be public land at the time of the location of the railroad grant on January 30, 1865, seems to be conclusive of this case. The court said:

> "Indeed, this exclusion did not depend upon the validity of the claim asserted, or its final establishment, but upon the fact that there existed a claim of a right under a grant by the Mexican Government, which was yet undetermined, and to which, therefore, the phrase 'public lands' could not attach, and which the statute did not include, although it might be found within the limits prescribed on each side of the road when located" (p. 632).

To say, then, that the land in this case was not *sub judice* at the time the Southern Pacific line of route was des-

ignated looks very much like flying in the face of this decision.

The learned district judge was clearly of opinion that the excess of land covered by the Thompson Survey of the San José grant was not subject to the Southern Pacific grant, and he stated the following satisfactory reasons for his conclusion:

> The records of the Land Department put in evidence in these cases clearly show that the contest over the survey of the San José grant was in relation to the identity of the natural calls of the grant, the grantees claiming that the true location of the trees and other objects called for in the specific description of the grant would include within those boundaries a portion of the lands in controversy here. If that contention was well founded undoubtedly the lands so included would not be public lands of the United States. It would seem plain enough, therefore, that until that question was finally decided it could not be known whether the lands so claimed were public lands or not. Under the laws of the United States the duty of deciding that question devolved, as has been said, upon the officers of the Land Department. Its ultimate determination was vested in the Secretary of the Interior. Had he decided that the lines as represented by the Thompson survey were the true boundaries of the grant, such decision would of course have been equally conclusive as the one that was made, and the patent following it would have been a conclusive determination that all the lands embraced within those lines were within boundaries of the Mexican grant and, therefore, not public lands to which the railroad grant only could attach. It would seem plain, therefore, that until the contested question of survey was decided it could not be known whether the lands involved in the contest were public or private lands; and until such decision became final, lands so involved were *sub judice* and not public lands within the meaning of the railroad grant act, according to the ruling in the cases referred to as I understand them.

It is sought to make the impression on the court that the doctrine urged by the complainant is that *any claim* that *anybody* may set up, *under any circumstances*, as to the proper boundaries of a Mexican grant, whether entertained by the Land Department or not, will suffice to place the grant *sub judice*. But no such position is assumed. The real contention is that so long as it was impossible

to say where the lines of the San José grant lay on the earth's surface, *in consequence of conflicting surveys made by order of the Land Department of the United States*, so long was that grant *sub judice*. This is the sole contention of the Government with reference to this particular grant.

It seems to have been overlooked that the importance of the bearing of the case of Doolan *v.* Carr on this case consists in the fact that it fully establishes that the existence of a contest in the Land Department as to where on the earth's face the calls of a *grant already confirmed* should be located, is enough to put in the category of lands *sub judice* all the lands involved in the contest. It is certainly a very reasonable doctrine that so long as the Land Department *entertains a controversy* as to the location of boundaries the land involved should not be treated as *public*.

It is quite immaterial *how* the question about boundaries arose in *Doolan* v. *Carr*, it being sufficient that it did arise and was decided in a way that supports our contention. If the learned circuit judge had seen the case from this point of view he would probably have considered as irrelevant much that is stated in his opinion. Both he and the learned counsel for the appellees seem to think that a difference in the facts between that case and the case at bar *necessarily means a difference in principle*, and their argument to show the inapplicability of the case of *Doolan* v. *Carr* appears to be completely disposed of by calling attention to the particular in which that case and this are precisely similar in principle.

Doolan v. *Carr* turned on the doctrine that a contest

before the Land Department of the Government as to the correctness of the location of the calls of a Mexican grant by an official survey is sufficient to keep a confirmed grant *sub judice* until the contest is finally decided. To say that the principle laid down by this authority is to be confined to disputes as to the location of floats inside of ascertained adjudicated exterior boundaries, is, in our judgment, to fritter away the principle by the arbitrary assumption that the court intended to limit the future application of its decision to the same conditions of fact as those then before it, whereas the court held that the land in question was excluded from the railroad grant because "*there existed a claim of a right* under a grant by the Mexican Government, *which was yet undetermined, and to which therefore the phrase 'public lands'* could not attach" (p. 632). The grant referred to had been finally adjudged valid by this court several years before, but, nevertheless, remained "*yet undetermined*" because of the dispute over its location.

It must not be forgotten that the powers of the Land Department touching the location of confirmed Mexican grants are largely judicial. It is, therefore, strictly correct to speak of land claims as *sub judice* whose location is a subject of contest before that department.

But for the contention on the other side, it would seem very absurd to say that the land involved in the contest over the Hancock and Thompson surveys was *public land* while that contest was going on.

Would a court of equity compel a purchaser to take a title in the predicament of that of San José while the

two conflicting surveys existed, each claiming to be a correct location of the grant? The answer must certainly be that it would not.

The learned circuit judge seemed to think that after a Mexican claim had been adjudged valid by a decree stating its metes and bounds the claim ceased to be *sub judice*, no matter what difficulties might occur in locating it on the earth by the calls in the decree of confirmation. This was simply to ignore the principle laid down in *Newhall* v. *Sanger*, and to hold that the land in question became subject to the Southern Pacific grant, although at the time that grant took effect the Land Department was so bewildered about the true location of the boundaries of the San José claim that it *ordered a third survey after the railroad grant took effect.* Does it need much argument to show that such a view is wholly inadmissible under the decisions of this court, and that it involves a total disregard of section 3 of the act of July 27, 1866, which expressly confines the operation of the grant to lands to which "the United States have *full title*, not reserved, sold, granted, or otherwise appropriated, *and free from preëmption or other claims or rights at the time the line of said road is designated, etc.?*"

The contention of the United States in this branch of the argument is fully sustained by the decision of Mr. Secretary Lamar of January 30, 1886 (4 Land Dec., p. 357), and the Assistant Secretary of June 7, 1887 (5 Land Dec., 691).

What has been said on this point, in reply to the views of the court below and the learned counsel for the appellees,

is equally applicable to the opinion of the supreme court of California in the case of *Foss* v. *Hinkell* (91 Cal., 194), which is much relied on by the other side. But the opinion in this case has by no means the same weight as it would have if the same court had not previously decided *directly the opposite in the same case* (78 Cal., 158). Between the two decisions the *personnel* of the court was considerably changed.

CONCLUSION.

It is unnecessary for me to attempt to add to the discussion of the question that the Southern Pacific Company, the defendant, is an essentially different corporate entity from the beneficiary of the land grant of the same name, and therefore was not authorized to earn the grant or receive the patents, which will be found in the able brief filed by Mr. Joseph H. Call, special assistant United States attorney, who had charge of these causes in the court below.

We beg leave to refer, also, to the able and instructive brief filed for the defendant, Joseph Hinkell, by Mr. Geo. W. Merrill.

It is submitted that the decrees in question find no support in the record and should be reversed.

WM. A. MAURY,
Assistant Attorney-General.

APPENDIX.

ACTS OF CONGRESS.

ATLANTIC AND PACIFIC GRANT, JULY 27, 1866.

(14 Stat., 292.)

AN ACT granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast.

Section 1 incorporated the company and provided for the construction and location of a line of railroad as follows: "Beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by the most eligible railroad route, as shall be determined by said company, to a point on the Canadian River; thence to the town of Albuquerque on the river Del Norte, and thence by the way of Agua Frio or other suitable pass to the headwaters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude as near as may be found most suitable for a railway route to the Colorado River, at such point as may be selected by said company for crossing, and thence by the most practicable and eligible route to the Pacific."

Section 2 grants a right of way, etc.

SECTION 3. That there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores, over the route of said line of railway and its branches, every alternate section of public land not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preëmption or other claims or rights, at the time the line of said road is designated, by a plat thereof

filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preëmpted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, so far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act. * * *

SECTION 4. That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath to the President of the United States, and patents of land as aforesaid shall be issued to said company, confirming to said company the right and title to said land situated opposite to and coterminous with said completed section of said road; and from time to time whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness, as aforesaid, and verified by said commissioners to the President of the United States, like patents shall be issued to said company conveying the additional sections of land as aforesaid; and so on as fast as every twenty-five miles of said road is completed as aforesaid.

* * * * * * *

SECTION 6. The President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale, or entry, or pre-emption, before or after they are surveyed, except by said company as provided in this act; but the provisions of the act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby, extended over other lands on the line of said road when surveyed, excepting those hereby granted to said company.

* * * * * * *

SECTION 8. *And be it further enacted*, That each and every grant, right and privilege herein, are so made, and given to, and accepted, by said Atlantic and Pacific Railroad Company, upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President; and shall complete not less than fifty miles per year after the second year; and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, anno Domini eighteen hundred seventy-eight.

SECTION 9. That the United States make the several conditional grants herein; and that said Atlantic and Pacific Railroad Company accept the same upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

* * * * * * *

SECTION 11. That said Atlantic and Pacific Railroad Company, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other Government service; and also subject to such regulations as Congress may impose, restricting the charges for such Government transportation.

* * * * * * *

SECTION 18. That the SOUTHERN PACIFIC RAILROAD, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided; and shall be required to construct its road on the like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for.

* * * * * * *

SOUTHERN PACIFIC GRANT.

SECTION 23, ACT MARCH 3, 1871.

(15 Stat. 573-579.)

Section 23 of an act of Congress approved March 3, 1871, entitled "An act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road, and for other purposes."

That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866.

Provided, however, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company.

ACT OF APRIL 20, 1871.

(17 Stat., 19.)

AN ACT to enable the Atlantic and Pacific Railroad Company to mortgage its road.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Atlantic and Pacific Railroad Company, organized under act of Congress of July twenty-seven, eighteen hundred and sixty-six, is hereby authorized to make and issue its bonds in such form and manner and for such sums, payable at such times, and bearing such rate of interest, and to dispose of them on such terms as its directors may deem advisable; and to secure said bonds, the said company may mortgage its road, equipment, lands, franchises, privileges, and other rights and property, subject to such terms, conditions, and limitations as its directors may prescribe. As proof and evidence of the legal execution and effectual delivery of any mortgage hereafter made by said company, it shall be filed and recorded in the office of the Secretary of the Interior: *Provided*, That if the company shall hereafter suffer any breach of the conditions of the act above referred to, under which it is organized, the rights of those claiming under any mortgage made by the company to the lands granted to it by said act shall extend only to so much thereof as shall be coterminous with or appertaining to that part of said road which shall have been constructed at the time of the foreclosure of said mortgage.

ACT OF FORFEITURE.

ACT OF JULY 6, 1886.

(24 Stat., 123.)

AN ACT to forfeit the lands granted to the Atlantic and Pacific Railroad Company, etc.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the lands, excepting the right of way and the right, power, and authority

given to said corporation to take from the public land adjacent to the line of said road material of earth, stone, timber, and so forth, for the construction thereof, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side-tracks, turntables, and water stations, heretofore granted to the Atlantic and Pacific Railroad Company by an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July twenty-seventh, eighteen hundred and sixty-six, and subsequent acts and joint resolutions of Congress, which are adjacent to and coterminous with the uncompleted portions of the main line of said road, embraced within both the granted and the indemnity limits, as contemplated to be constructed under and by the provisions of said act of July twenty-seventh, eighteen hundred and sixty-six, and acts and joint resolutions subsequent thereto and relating to the construction of said road and telegraph be and the same are hereby, declared forfeited and restored to the public domain.

ACT OF MARCH 3, 1851.

(9 Stat., 631.)

AN ACT to ascertain and settle the private land claims in the State of California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of ascertaining and settling private land claims in the State of California a commission shall be, and is hereby, constituted, which shall consist of three commissioners, to be appointed by the President of the United States by and with the advice and consent of the Senate, which commission shall continue for three years from the date of this act, unless sooner discontinued by the President of the United States.

* * * * * * *

SEC. 8. *And be it further enacted*, That each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican Government shall present the same to the said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claims; and it shall be the duty of the commissioners, when the case is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of said claim, and, within thirty days after such decision is rendered, to certify the same, with the reasons on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered.

SEC. 9. *And be it further enacted*, That in all cases of the rejection or confirmation of any claim by the board of commissioners, it shall and may be lawful for the claimant or the district attorney, in behalf of the United States, to present a petition to the district court of the district in which the land claimed is situated, praying the said court to review the decision of the said commissioners, and to decide on the validity of such claim; and such petition, if presented by the claimant, shall set forth fully the nature of the claim and the names of the original and present claimants, and shall contain a deraignment of the claimant's title, together with a transcript of the report of the board of commissioners and of the documentary evidence and testimony of the witnesses on which it was founded; * * *

SEC. 10. *And be it further enacted*, That the district court shall proceed to render judgment upon the pleadings and evidence in the case, and upon such further evidence as may be taken by order of the said court, and shall, on application of the party against whom judgment is rendered, grant an appeal to the Supreme Court of the United States, on such security for costs in the district and Supreme Court, in case the judgment of the district court shall be affirmed, as the said court shall prescribe; and if the court shall be satisfied that the party desiring to appeal is unable to give such security, the appeal may be allowed without security.

SEC. 11. *And be it further enacted*, That the commissioners herein provided for and the district and Supreme courts in deciding on the validity of any claim brought before them under the provisions of this act shall be governed by the treaty of Guadaloupe Hidalgo, the law of nations, the laws, usages, and customs of the Government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States, so far as they are applicable.

SEC. 12. *And be it further enacted*, That to entitle either party to a review of the proceedings and decision of the commissioners hereinbefore provided for notice of the intention of such party to file a petition to the district court shall be entered on the journal or record of proceedings of the commissioners within sixty days after their decision on the claim has been made and notified to the parties, and such petition shall be filed in the district court within six months after such decision has been rendered.

SEC. 13. *And be it further enacted*, That all lands, the claims to which have been finally rejected by the commissioners in manner herein provided, or which shall be finally decided to be invalid by the district or Supreme Court, and all lands, the claims to which shall not have been presented to the said commissioners within two years after the date of this act, shall be deemed, held, and considered as part of the public domain of the United States; and for all claims finally confirmed by the said commissioners or by the said district or Supreme Court, a patent shall issue to the claimant, upon his presenting to the General Land Office an authentic certificate of such confirmation, and a plat or survey of the said land,

duly certified and approved by the surveyor-general of California, whose duty it shall be to cause all private claims, which shall be finally confirmed, to be accurately surveyed, and to furnish plats of the same; and in the location of the said claims, the said surveyor-general shall have the same power and authority as are conferred on the register of the land office and receiver of the public moneys of Louisiana, by the sixth section of the act "to create the office of surveyor of the public lands for the State of Louisiana," approved third of March, one thousand eight hundred and thirty-one: *Provided, always*, That if the title of the claimant to such lands shall be contested by any other person, it shall and may be lawful for such person to present a petition to the district judge of the United States for the district in which the lands are situated, plainly and distinctly setting forth his title thereto, and praying the said judge to hear and determine the same, a copy of which petition shall be served upon the adverse party thirty days before the time appointed for hearing the same. *And provided further*, That it shall and may be lawful for the district judge of the United States, upon the hearing of such petition, to grant an injunction to restrain the party, at whose instance the claim to the said lands has been confirmed, from suing out a patent for the same until the title thereto shall have been finally decided, a copy of which order shall be transmitted to the Commissioner of the General Land Office, and thereupon no patent shall issue until such decision shall be made or until sufficient time shall, in the opinion of the said judge, have been allowed for obtaining the same; and thereafter the said injunction shall be dissolved.

* * * * * * *

Office Supreme Court U.S.
FILED.
OCT 24 1891
JAMES H. McKENNEY

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE UNITED STATES
vs.
THE COLTON MARBLE AND LIME COMPANY *et al.* } No. 1301.

THE UNITED STATES
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY *et al.* } No. 1302.

THE UNITED STATES
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GARRETT L. LANSING and JOSEPH E. YOUNGBLOOD, trustees. } No. 1374.

THE UNITED STATES
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, GARRETT L. LANSING, Trustees, The City Brick Company, *et al.* } No. 1375.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

MOTION TO ADVANCE.

And now, October 26, 1891, comes the Attorney-General and moves the court to advance the above-named

cases for an early hearing at such time as may be convenient to the court.

These four cases were tried and determined as test suits in order to settle the title to lands in the indemnity, and also in the primary limits of the grant of July 27, 1866, to the Atlantic and Pacific Railroad Company, where such grant is intersected by the primary and indemnity limits of the grant of March 3, 1871, to the Southern Pacific Railroad Company. The first two cases, Nos. 1301 and 1302, involve land outside of the 20-mile limit, but within the 30-mile limit grant, to the Atlantic and Pacific Railroad Company, and within the 20-mile limit of the grant to the Southern Pacific Railroad Company. The last two cases, Nos. 1374 and 1375, involve the title to lands in the primary limits, *i. e.*, within the 20-mile limits of both grants.

The cases involve all the lands in the overlap of the two grants, and will determine the title to several million acres of land. The Department of the Interior has uniformly held that lands within the overlap were excepted from the grant to the Southern Pacific Railroad Company of March 3, 1871, because of the prior grant to the Atlantic and Pacific Railroad Company. The controversy has been of long standing, involves great interests, and has been very serious in its nature. Grantees of the Southern Pacific Railroad Company have entered upon many of the lands and claim possession, while others having made entries of the land under the land laws of the United States, which have been allowed by the Interior Department, have likewise claimed possession. Several men have been

killed in quarrels growing out of the controversy. The limits covered by the overlap extend some 90 miles east and west, and 40 miles north and south, covering parts of three counties.

The uncertainty of the title and the inability to obtain title have impeded, and still impede, the settlement of the country, and materially retard the progress of southern California. There are thousands of applications to enter lands pending in the Interior Department within the overlapping limits of these grants, which have not been acted upon in that Department. Thay have been suspended by order of the Secretary of the Interior until the question herein involved, shall be judicially determined. There are valuable oil wells, gold and silver mines, and other rich deposits on odd-numbered sections within the limits of this overlap, to which no title can be obtained.

The grant to the Atlantic and Pacific Railroad Company, of July 27, 1866, was forfeited as to lands not coterminous with the constructed portion of such railroad by the act of Congress approved July 6, 1886, entitled, "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line in the States of Missouri and Arkansas to the Pacific coast, and restore the same to settlement, and for other purposes." No part of the line of the Atlantic and Pacific Railroad Company, was constructed in California, but the line was located from Springfield, Mo., to the Pacific Ocean, and plats of the route were filed in the Interior Department, and lands along

the line were withdrawn and reserved for the benefit of that company. Until these cases are determined it is impossible for the Interior Department to adjust the grants to the Atlantic and Pacific Railroad Company and the Southern Pacific Railroad Company, as it is claimed by the latter company that the Atlantic and Pacific Railroad Company never had a grant in California, and that its right to the land never attached west of the Colorado River.

These suits are all suits to quiet the titles to the lands therein described. One of the grounds for recovery is that the Southern Pacific Railroad Company, the beneficiary under the act of Congress of March 3, 1871, did not construct or complete any portion of the railroad between Tehachipa Pass, by way of Los Angeles, to the Colorado River. The grant was made March 3, 1871. In 1873, before any part of the railroad had been completed, a new corporation was organized, which took the same name (i. e., the Southern Pacific Railroad Company) as that of the beneficiary of the grant.

The new company assumed to take the right to construct the road by an assignment of all the rights conferred on the old company by the act of March 3, 1871. The new company constructed the road. It is contended that the assignment was illegal and void, and could not operate to transfer to the new company the land granted, or any of the privileges, grants, or rights conferred by the act of March 3, 1871, because the United States has not, through Congress or any other competent authority, ever recognized or authorized any such transfer. On Septem-

ber 29, 1890, Congress passed an act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads and for other purposes; and it will be seen from the foregoing statement that the operation of this act is involved in the present controversy, and that a construction of the same is necessary.

In view of the very important questions affecting the administration of the land laws by the Interior Department, and in view of the value of the subject matter of the suits, I respectfully submit that the cases should be advanced.

W. H. H. MILLER,
Attorney-General.

146-576

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Supreme Court of the United States.

OCTOBER TERM, 1892.

UNITED STATES, APPELLANT,
v.
COLTON MARBLE AND LIME COMPANY AND OTHERS. } No. 862.

UNITED STATES, APPELLANT,
v.
SOUTHERN PACIFIC RAILROAD COMPANY AND others. } No. 863.

UNITED STATES, APPELLANT,
v.
SOUTHERN PACIFIC RAILROAD COMPANY AND others. } No. 921.

UNITED STATES, APPELLANT,
v.
SOUTHERN PACIFIC RAILROAD COMPANY AND others. } No. 922.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

WM. A. MAURY,
Assistant Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, 1892.

UNITED STATES, APPELLANT,
v.
COLTON MARBLE AND LIME COMPANY AND OTHERS. } No. 862.

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APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

The counsel for the appellees attempts to meet the position taken in argument that the Southern Pacific Railroad Company did not file a map definitely locating its line of route on April 3, 1871, or at any time afterwards, so far as the record shows, by insisting that the

position is outside the lines of the complainant's contentions as fixed by the pleadings.

But the court will observe that the object of these bills is to quiet the title of the United States against any and every claim of title set up by the defendants.

It is furthermore to be observed that the lands in question were acquired by the United States by conquest and cession and consequently that they once belonged to the public domain. If now the Southern Pacific Company acquired any title to these lands it devolves upon that company to show how that title was derived, as everyone must do who claims to hold, to the exclusion of the United States, land which once belonged to the public domain.

Claiming, as that company does, under a grant from Congress, imposing on it divers terms and conditions, it is incumbent on it to show by *authentic evidence*, and not by any *guessing* process, that it has duly and punctually performed the terms and conditions of its grant.

It does not seem to occur to the eminent counsel for the appellees that the Southern Pacific Company has no patents for the greater part of the lands in controversy, and, therefore, that the company is entitled to no presumptions in its favor and that the burden of proof is on it to show in what lawful way these unpatented lands have ceased to be a part of the public domain.

The Southern Pacific Company having failed to convince the Land Department of the United States that it was entitled to patents, and having, in a high-handed way, intruded upon the public domain and opened a land office of its own there, to the exclusion of the United

States, is entitled to no favor whatever, and may be properly held by a court of equity to strict and full proof of every fact necessary to sustain its claim of title.

Now, in view of the letter of the Commissioner of the General Land Office of April 21, 1871 (No. 863, p. 376), which letter is a necessary part of the stipulation that the Southern Pacific Company did "*designate the line of its railroad,*" it is too obvious for discussion that the line of railroad referred to in the stipulation was only "*the general route*" of the road, it can not reasonably be contended that the line of road referred to in the stipulation (No. 863, p. 242) was the line of definite location.

When this line of general route was filed and approved it secured to the Southern Pacific Company the withdrawal from entry, *by mere operation of law*, of all the odd sections of land lying inside of a belt of 40 miles on each side of the line of general route, as provided by section 6 of the grant. But the filing of this line of general route did not give effect to the grant, which, indeed, did not take effect until the *line of construction of the road was approved*, for it does not appear, unless we are to invoke the *guessing* process, that any other line of definite location was ever filed.

In *Buttz* v. *Northern Pacific Railroad* (119 U. S., 56) the sixth section of the grant to the Northern Pacific Railroad Company was in exactly the same language as the sixth section of the Southern Pacific grant, and section 3 of both acts grants such lands as may be the full, unencumbered property of the Government "at the time the line of said road is definitely fixed and a plat thereof filed in the office

of the Commissioner of the General Land Office." The court in this case points out the distinction between the line of definite location mentioned in section 3 and the "*preliminary designation of the general route of the road*" mentioned in section 6.

The case cited is absolutely conclusive of the case at bar in the particular of the opposite contention that the lines of designation mentioned in sections 3 and 6 of the Southern Pacific grant are one and the same lines.

In the nature of things the filing of the line of general route on April 3, 1871, could not have been founded on a survey, but was entirely tentative and preliminary.

On referring to the accompanying extracts (see appendix) from the official document compiled by order of the Secretary of the Interior, showing land grants made by Congress to aid in the construction of railroads, etc., it appears that a withdrawal order embracing the whole route was made on April 21, 1871, and that as the several sections of the road were constructed, from time to time, *new withdrawal* orders were made, namely, on September 17, 1874, December 20, 1875, August 19, 1876, March 27, 1877, April 9, 1878, which shows, conclusively, that the line of definite location was designated in segments and about the time the several withdrawal orders were entered.

These new withdrawals were no doubt made necessary by the deviations of the line of construction from the line of general route as shown by the damaging and, consequently, much spurned map to be found at p. 447 of the record in No. 863.

It is submitted that the court should take official notice of the above quoted public document relating to so important public matters as grants by Congress of public lands for the construction of railroads for the transportation of the mails and the troops and munitions of war of the United States.

The question here is not whether the Southern Pacific Company deviated from its line of general route in the work of actual construction, but whether the foundation of the argument of the appellees is sound, that the line of definite location of the Southern Pacific Company was filed before that of the Atlantic and Pacific Company. If our contention in this particular is correct that argument goes for nothing, if it could possibly have any validity.

Mr. Merrill is mistaken in his brief, in supposing that the question of the date of the filing of the line of definite location of the Southern Pacific Company may offset appellant's contention as to the San José grant, in view of the recent decision of this court in the case of *Bardon* v. *Northern Pacific Railroad* (145 U. S., 535), which holds that a land grant operates on lands subject to it *at the date of the grant*, and not at the date of the filing of the line of definite location.

The position taken by the appellees that there could be no valid designation of its line of definite location by the Southern Pacific Company by filing maps of segments of its route through California at different times, is entirely at war with its admission in the record that the line of definite location of that road between Springfield, Mis-

souri, and the Colorado River was designated by maps of segments of that part of the line (No. 863, p. 249.) It is certainly an attempt to blow hot and cold in the same breath to set up these inconsistent pretensions. It is asking this court to consider a mere *whim* in the room of a grave proposition of law.

It is unnecessary to repeat the argument to show that the Atlantic and Pacific Company did designate validly its whole line of route.

We avail ourselves of this opportunity to refer the court to the letter of Commissioner Joseph S. Wilson (No. 863, p. 341) to the effect that the Hancock survey fell under the act of June 1, 1864.

WM. A. MAURY,
Assistant Attorney General.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1898.

UNITED STATES, *Appellant*,
vs.
COLTON MARBLE AND LIME COMPANY AND OTHERS. } No. 862.

UNITED STATES, *Appellant*,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY AND OTHERS. } No. 863.

UNITED STATES, *Appellant*,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY AND OTHERS. } No. 921.

UNITED STATES, *Appellant*,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY AND OTHERS. } No. 922.

SUPPLEMENTAL BRIEF FOR APPELLEES.

JAMES C. CARTER,
Of Counsel.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

UNITED STATES, *Appellant*,
vs.
COLTON MARBLE AND LIME COMPANY AND OTHERS. } No. 862.

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UNITED STATES, *Appellant*,
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SOUTHERN PACIFIC RAILROAD COMPANY AND OTHERS. } No. 922.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

The counsel for the appellees in the above causes avails himself of the permission granted by the court upon the oral argument to file a paper in the nature of a reply to the point attempted for the first time to be made in the argu-

ment of these cases by the brief of Mr. Merrill to the effect that the route designated by the Southern Pacific Company in April, 1871, was not a sufficient location of a route. He does not purpose to add anything to what was said by him at the oral argument, but wishes that the learned judges may have before them in writing a brief statement of the case:

First. The original bills, taken together, attacked the title of the Southern Pacific Company on three grounds and upon those only:

1. That the present Pacific Company is not the corporation to which the grant was made.

2. That the grant to the Southern Pacific Company did not carry title to the premises in question, because they had been before granted to the Atlantic and Pacific Company, this priority being gained notwithstanding the fact that the company first mentioned made the earliest designation of its route, by the circumstance that the grant to the Atlantic and Pacific Company was the earliest in *date*, and that therefore, upon the designation of its route, its title then attaching to the lands was carried back, by relation, to the date of its grant.

3. That part of the lands were at the time of the grant to the Southern Pacific Company within the claimed limits of a Mexican grant which was then *sub judice*.

Second. The above were the only questions made by the pleadings, the only questions which could be litigated, and the only ones which have ever in fact been litigated. How,

upon this state of the records, a question can be argued in this court which never arose or could arise in the court below the undersigned cannot understand.

Third. If the above point needed anything to make it entirely conclusive, which it does not, the want would be supplied by the fact that each one of the bills in express terms alleges that the Southern Pacific Company did designate its route, as required by the statute, on April 3, 1871, and these allegations are admitted by the answers. How, in the face of this, the designation of the route on that day can be drawn in question on these appeals the learned counsel who suggest the question have failed to point out.

Record in 1374 (902), pp. 2, 10, 27. 921
" " 1375 (903), pp. 2, 14, 35. 922
" " 1301 (921), pp. 3, 10, 13, 18, 30, 43. 862
" " 1302 (922), pp. 120, 135. 863

And the same fact is also embraced in the stipulations, which are repeated in all the suits. (Record in 1302, p. 242.)

Fourth. There is no foundation for the notion that the grant contemplates more than one designation of route for the purpose of attacking the grant to lands, or that the Southern Pacific Company had any purpose in filing the plat in April, 1871, other than that of thus perfecting the grant to it.

Fifth. The suggestion in the brief of Mr. Merrill that another plat of more definite location was filed in the General Land Office, even if the point could be made, has no support anywhere in the evidence. The way in which this designa-

tion is made shows there is no foundation for it. It is that such map must have been filed somewhere between two periods of time widely separated from each other. But if such a map was filed, where is it? Why is it not produced? Has it been lost? If so, where is the entry of the filing of it?

Sixth. Concerning the proceedings of corporate meetings of the Southern Pacific Railroad Company subsequent to April, 1871, at which proceedings purport to have been had adopting as the line of the road between certain points, lines referred to as having been surveyed and laid down on certain maps, the undersigned has to say that these proceedings undoubtedly suggest that some surveys of some parts of the route had been had subsequent to the designation of the route in 1871, and that they were adopted by the company as the line of its road between specified points. How much of the road these surveys covered, whether they deviated from the designated route, what the purpose of the surveys was, the undersigned has no knowledge, and the records furnish no information. He has not at any time in the course of preparation for argument supposed that he was called upon to examine any questions except those which the pleadings made and which the parties in the court below *intended* to litigate.

If the plaintiffs by their bill had sought to attack the designation of the route by the Southern Pacific Company in April, 1871, and framed their bills to that effect, it is presumed that the corporate resolutions above referred to would have been fully explained by the introduction of such evidence as would show their nature, meaning, and intended effect.

The undersigned, however, has the privilege with others of *guessing* what these resolutions mean, and that is that the road was built in sections by a contract company, and that as the several sections were reported completed, exact surveys were also reported of the line of the road as actually constructed; that this line happened, for engineering reasons, to deviate in some places and to some extent from the route as designated in 1871, and that it was for some reasons deemed necessary or expedient that the line of actual construction should be formally adopted by the company.

But this conjecture may be quite unfounded. The undersigned has no present access to persons acquainted with the fact.

Seventh. However this may be, it would seem clear that if the company did in April, 1871, designate its route in the manner required by the grant, the granted interest attached. No subsequent act of theirs changing the route could of itself shift the grant or have any effect on the prior designation. If the road was not built upon the line designated, the United States might indeed have made that a ground for refusing to accept the road, but if they did accept it, it would be an end of the matter.

The undersigned is informed that such deviations from designated routes for engineering reasons frequently occur in cases like the present. The utmost effect they could have would seem to be to raise a question whether the grant became shifted with the line or remained the same.

This question, unless it so happened that there was a difference on the whole in the value of the lands, would have no substantial importance, and certainly is not raised by these suits.

In relation to the diagram, which is alleged to show two routes, one the original location and the other a more definite one, it is to be observed that it is not a paper furnished by the Southern Pacific Company but made up in the land office for some unexplained purpose. If another *guess* may be ventured, it is that it was made up after the construction of the road and from materials furnished by the reports of the commissioners appointed by the President to examine it.

JAMES C. CARTER,
Of Counsel for Appellees.

In relation to the diagram, which is alleged to show two routes, one the original location and the other a more definite one, it is to be observed that it is not a paper furnished by the Southern Pacific Company but made up in the land office for some unexplained purpose. If another *guess* may be ventured, it is that it was made up after the construction of the road and from materials furnished by the reports of the commissioners appointed by the President to examine it.

JAMES C. CARTER,
Of Counsel for Appellees.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

UNITED STATES, *Appellant*,
vs.
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UNITED STATES, *Appellant*,
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Reference to proofs for the purpose of showing what maps were filed by the Atlantic and Pacific R. R. Co. to designate its route in California.

JAMES C. CARTER,
Of Counsel for Appellees.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

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UNITED STATES, *Appellant*,
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For the aid of the court in ascertaining just what was done by the Atlantic and Pacific Company toward designating the route of its railroad line, the following statement and references are made:

That company filed in the General Land Office four separate maps, designating respectively fragmentary parts of a route between the eastern boundary of California, at a point called "The Needles," and San Francisco, on the Pacific. These fragmentary parts taken together constitute a continuous line between those *termini*.

Two of these maps were filed apparently on the 12th of March, 1872. One of them will be found mentioned in a certificate of W. M. Stone, acting Commissioner, on page 371 of Record 868, and a copy of the map itself will be found between pages 372 and 373. It marks out a route from San Francisco to San Miguel Mission, which latter place is a long distance north of San Buenaventura.

The other of the maps filed, as above mentioned, on March 12, 1872, will be found mentioned in a certificate of Acting Commissioner Stone, on page 372, and a copy of it will be found next after the map above mentioned and between the same pages, 372 and 373. It begins, as described in the certificate, at the western boundary of Los Angeles county and extends to a point in township 7 north and range 7 east, San Bernardino base and meridian. These two maps left two vacant spaces to be filled in order to constitute a continuous line between San Francisco and the eastern boundary of California—one between San Miguel Mission and the western boundary of Los Angeles county, and the other between the point in township 7 above mentioned and the eastern boundary of California.

These vacant spaces were subsequently filled by sending two other maps to the Interior Department on August 16, 1872, which were subsequently transmitted to the General Land Office on April 16, 1874. They are mentioned in a certificate of Land Commissioner Sparks, found on page 375. Copies of both of these maps are to be found between pages 376 and 377. The first one begins at San Miguel Mission, the terminus of one of the former fragmentary designations, and extends to the beginning of the other of said fragmentary designations, on the western boundary of Los Angeles county. It *passes through* San Buenaventura, which is the first point at which the Pacific ocean is reached on this line from the east. The other begins at the terminus of one of the above-mentioned fragmentary designations, in the township No. 7

above referred to, and extends to the eastern boundary of California, at The Needles.

The above-mentioned four maps are the only maps ever filed by the Atlantic and Pacific Company for the purpose of designating a route through the State of California. If a route can thus be designated in fragments, these maps designate a route between the eastern boundary of California, at The Needles, as the eastern terminus, and San Francisco as the western terminus.

There never was any designation by this company of a route with its Pacific terminus at San Buenaventura, although some such thing might be inferred from a decision by Secretary Lamar, dated March 23, 1886. (Record, p. 499.)

It is said in this communication by Secretary Lamar: "On the 16th day of April, 1874, 12th March, 1872, and the "16th day of April, 1874 (*sic*), several maps of definite lo- "cation of different sections of the road were filed, which "carried the definite location thereof to San Buenaventura, "on the Pacific ocean."

"On the 12th day of March, 1872, and the 16th day of "April, 1874, maps of definite location of sections of the "road were filed, by which its line of definite location was "carried from San Buenaventura to San Francisco."

This statement, if understood to import that by one set of maps San Buenaventura was made a terminus, and that by another set, filed on the same day, the line was carried from San Buenaventura on to San Francisco, would be erroneous. The only maps ever filed were the four, the history of which has been given above, and San Buenaventura was not a terminus in either of these. It is simply a point *in the line* designated by one of the maps and far distant from either of the termini.

In order to make this clear it may be well to trace the whole matter of the filing of maps purporting to locate the route of the Atlantic and Pacific railroad through California. The proofs introduced in the court below on this subject are

first referred to on page 230 of the record. Mr. Call, for the United States, there appears to offer four several maps in evidence; and it will be seen, upon looking at the descriptions, that they are *the same four* first above referred to. These are the only maps which were ever offered in evidence by the United States as showing the route of the Atlantic and Pacific railroad in California.

On page 228 Mr. Call offered for the Government a letter dated March 3, 1872, from C. J. Hillyer, attorney of the Atlantic and Pacific Company, inclosing maps. This letter is to be found on pages 514 and 515. It mentions *four* maps as being inclosed, but only *two* of these are maps of the route in California. The other two relate to sections of the road lying east of California. The *two* maps relating to the *California* route are the *same two* hereinbefore referred to as the two first filed. It will thus be seen that they were first transmitted to the Interior Department inclosed in a letter of March 8, 1872; but the Interior Department was not the place where they should have been filed; the General Land Office was the place.

Accordingly we find on page 516 a letter from Secretary Delano to the Commissioner of the Land Office transmitting the same four maps, *two* of which only, as above mentioned, related to the route in California.

The first trace we have of the two maps *last* filed is found in a letter from Secretary Delano to the Commissioner of the General Land Office, dated April 16, 1874, and inclosing these two maps, with a statement that they had been received August 15, 1872, from N. L. Jeffries, attorney of the company. These two maps, therefore, were not actually filed in the Land Office until on, or after, April 16, 1874. (See Record, p. 375.)

Enough has now been pointed out to show that the four maps were the only ones filed; but, if further evidence were needed, it will be seen that Mr. Call's offers of evidence in respect to the route in California were limited to these

four maps (Record, pp. 226–232); and, finally, the stipulated admissions X, XI, XII, and XIII remove all doubt. The four maps referred to in those admissions are the same four of which the history has now been traced.

It may tend also to prevent misapprehension to say that in 1869 the Atlantic and Pacific Company *attempted* to file a designation of a route on *one* map by which San Francisco and a point on the eastern boundary of California were made the termini. Secretary Cox promptly decided that this route was not authorized by the grant. After the filing of the four maps referred to, Secretary Delano being at the head of the Interior Department, he reversed the decision of his predecessor and allowed the route. Secretary Lamar in like manner reversed the decision of Secretary Delano; and, while agreeing with Secretary Cox that a road from The Needles to San Francisco was not allowed by the grant, held that San Buenaventura might be taken as the western terminus. The designation of San Buenaventura as a terminus appears, as was insisted by the undersigned upon the oral argument, to have been a designation by Secretary Lamar alone, and not by the Atlantic and Pacific Company.

Some of the papers contained in the record are the decisions, or references to the decisions, thus referred to.

JAMES C. CARTER,
Of Counsel for Appellees.

IN THE SUPREME COURT OF THE UNITED STA

OCTOBER TERM, 1892.

Nos. 921 and 922.

UNITED STATES,
Appellant,

vs.

SOUTHERN PACIFIC R. R. CO., ET AL.,
Appe

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

PETITION FOR REHEARING

JAMES C. CARTER,
J. HUBLEY ASHTON,
Of Counsel for Ap

JOSEPH D. REDDING,
Solicitor for Ap

C. G. Burgoyne, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

OCTOBER TERM, 1892, Nos. 921 AND 922.

UNITED STATES, APPELLANT,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY AND OTHERS,

Appellees.

Appeals from the Circuit Court of the United States for the Southern District of California.

PETITION FOR REHEARING.

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The appellees in the above-entitled cases hereby humbly pray that the said cases may be reheard and a reargument therein ordered; and that decrees be rendered affirming the decision and decrees of the Circuit Court; or that decrees be rendered setting

aside the decrees below, and remanding the cases to the Circuit Court for such further proceedings to be had in the said cases by the Circuit Court as to law, equity and justice shall appertain.

The grounds of this application are,

First, that the Court in its decision, as evidenced by its written Opinion filed on the 12th day of December, 1892, giving its reasons therefor, inadvertently erred in respect to certain matters of law and fact material to the decision of the cases, hereinafter expressly mentioned; and,

Secondly, that it appears from the said Opinion that the Court has decided the cases in one aspect thereof upon a material question of fact not raised or put in issue by the bill and answer, and to which the proofs of the parties were not directed, and in respect to which the fact, as found by the Court and upon which its decision is in part predicated, is directly contrary to the allegations of the bills, the admissions of the answers and the stipulations of the parties in the suit.

I.

THE COURT HAS FAILED TO GIVE DUE LEGAL EFFECT TO THE ACT OF JULY 6, 1886, CHAP. 637, FORFEITING THE LANDS GRANTED TO THE ATLANTIC AND PACIFIC RAILROAD COMPANY.

The defendants and appellees respectfully submit to the learned Court, that if the Atlantic and Pacific Railroad Company acquired title to the lands in controversy as of July 27, 1866, the legal operation and effect of *the act of forfeiture of July* 6, 1886, were to restore the title of all the lands embraced in the forfeiture, declared by that Act, to the United States, *as of the date of the grant;* namely, *July* 27, 1866, thus "defeating" and "avoiding" the grant to the Atlantic and Pacific Railroad Company with the like effect as if it had never existed.

The Forfeiting Act of July 6, 1886, is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:* That all the lands, excepting the right of way and the right, power and authority given to said corporation to take from

the public lands adjacent to the line of said road material of earth, stone, timber and so forth, for the construction thereof, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turn tables, and water stations, heretofore granted to the Atlantic and Pacific Railroad Company by an act entitled, '*An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast*,' approved July twenty-seventh, eighteen hundred and sixty-six, and subsequent acts and joint resolutions of Congress, which are adjacent to and coterminous with the uncompleted portions of the main line of said road, embraced within both the granted and indemnity limits, as contemplated to be constructed under and by the provisions of the said Act of July twenty-seventh, eighteen hundred and sixty-six, and acts and joint resolutions subsequent thereto and relating to the construction of said road and telegraph, be and the same are hereby, declared forfeited and restored to the public domain" (24 Stat., 123).

The grant to the Atlantic and Pacific Railroad Company under the Act of July 27, 1866, was a grant upon condition subsequent.

It is unnecessary to cite authorities to this proposition, or to the proposition that Congress upon failure to perform the condition had the right to forfeit the grant.

It is submitted to the Court that, agreeably to well-established principles of law, upon such forfeiture, the granted estate became void *ab initio*, and the United States was again seized of its original estate in the lands, as of July 27, 1866, in the same manner and with the same effect as if it had never made any grant to the Atlantic and Pacific Railroad Company.

Cruise, in his *Digest of the Law of Real Property*, lays down the law as follows:

"*When a person enters for a condition broken, the estate becomes void* AB INITIO; the person who enters is again seized of his *original estate in the same manner as if he had never conveyed it away.* And as the entry of the feoffor on the feoffee for a condition broken defeats the estate to which the condition was annexed, *so it defeats all incidents and rights* annexed *to that estate, with all charges and encumbrances* created by the feoffee during his possession; for, upon the entry of the feoffor, he *becomes seized of an estate paramount* to that which was subject to those charges."

1 Greenleaf's Cruise on Real Property, Ed. 1856, p. 509, Section 52: citing Lit. Section 325; 1 Inst., 202a.

Sheppard's Touchstone, by Preston, says:

"It is generally true, that he that doth enter for

a condition broken doth make the estate void *ab initio;* and that he shall be in of his first estate in the same course and manner as it was when he departed with the possession, and at the time of the making of the condition. And hence it is that if there be any charge or incumbrance on the land; as if lessee of land upon condition grant a rent charge out of the land, or enter into a statute, or recognizance, and the conusee have the land in execution, and this charge is created after the condition is made; in this case, when the condition is broken, and the party doth re-enter, he shall, by relation, avoid the rent, statute, and recognizance, and hold the land freed from them all; (on the principle of *cessante statu primitivo cessat derivations*). * * * And if a man enter for breach of a condition in law, he shall avoid all charges and acts done after that thing is done, which doth produce the forfeiture (for his title has *relation* to the period of forfeiture)."

1 Shep. Touch., by Preston, p. 155.

Comyn says:

"He who enters for a condition broken regularly shall have the land in his first estate."

3 Digest, 133. Conditions (O. 6).

Coke-Littleton says:

"He that entreth for a condition broken shall be seized in his first estate, or of that estate

which he had at the time of the estate made upon condition."

Co.-Litt, Section 325.

Bacon, in his Abridgment, says:

"It is laid down as a Rule, That he who enters for a Condition broken, shall be in of the same estate he was before; and therefore shall avoid all mesne Charges and Incumbrances."

Conditions O., 4.

Mr. Preston states the doctrine in the same way (2 Preston on Abstracts. 195 *et seq.*). That great conveyancer observes at page 198:

"Whoever wishes to understand the doctrine of "conditions thoroughly, according to the rules of "the common law, with all the various important "distinctions which belong to this subject, will do "well to read the chapter on *Conditions* in Comyn's "Digest, and in Shep. Touchstone, chap. Condi-"tions; 1st Inst., chap. *Conditions.*"

The American authorities state and apply the doctrine with the same effect (see Barker vs. Cobb, 36 N. H., 344; Mich. State Bank vs. Hastings, 1 Dougl. [Mich.], 225; De Peyster vs. Michael, 6 N. Y., 467, 506; Gray, Restraints on Alienation, § 309.)

In the leading railroad land grant case of *Schulenberg vs. Harriman* (21 Wall., 44), this Court, speaking by Mr. Justice FIELD, said:

"In what manner the reserved right of the grantor for breach of the condition must be asserted so as to *restore* the estate, depends upon the character of the grant. If it be a private grant, that right must be asserted by *entry* or its equivalent. If the grant be a public one it must be asserted by judicial proceedings authorized by law, * * * or there must be some legislative assertion of ownership of the property for breach of the condition" (p. 63).

In *St. Louis, etc., Railway Co. vs. McGee* (115 U. S., 469, 474), the Court declared that there must be "an intention by Congress to *reassert* "title and resume possession."

In the case of *U. S. vs. Repentigny* (5 Wall., 211), there was a grant by the French Government, in 1751, of certain lands to Repentigny and De Bonne, with condition subsequent of occupancy, etc. The facts disclosed to the Court that the occupancy had not continued. The Territory (Michigan) within which the lands were embraced afterwards, by conquest and treaty, became part of the United States. Settlers went on the lands in-

volved as early as 1820, and the Government surveyed the lands and *confirmed* the title of these settlers from the United States.

The Court found (the suit was brought in 1860) that there was a *forfeiture* of the grant to Repentigny and De Bonne, resulting from the action of the Government in permitting settlers to enter, &c., and the rights and title of the settlers were *protected.* In other words, the entry of the Government on the land upon breach of condition subsequent *restored the estate as to the original grantor* (the French Government), and as of the date of the original grant to Repentigny and De Bonne.

The United States, upon forfeiture of the grant to Repentigny and De Bonne for breach of condition subsequent, entered as the successor to the French Government, the former sovereign, and as of its estate in the lands.

This is the result of every entry for forfeiture for condition broken upon an estate on condition subsequent.

The legal effect of the Forfeiture Act of 1886 was to "defeat" and "avoid" the grant to the Atlantic and Pacific Railroad Company as of the date of the granting act, and to "defeat" and "avoid" all proceedings taken thereunder, includ-

ing that company's designation or attempted designation of the line of its proposed road, as absolutely and effectually as if the grant had never been made, and such proceedings had never been taken.

The grant, as such, and the acts done by the grantee, as such, under the Act of 1866, were, by the operation of the legislative decree of forfeiture, *obliterated*; in the language of *Cruise* (*supra*) "defeated;" in the language of *Sheppard* and *Bacon* (*supra*), "avoided," *i. e.*, made void.

The United States, by the forfeiture declared by it, is disabled from alleging or pretending that the Atlantic and Pacific Railroad Company had title to these lands when the Southern Pacific Railroad Company designated its line and constructed its railroad along the lands in controversy, or attempting to impeach the rights of that company upon the pretension of title in the Atlantic and Pacific Company.

In all judicial courts, the grant of 1866 to the Atlantic and Pacific Company in California, and the action of the grantee in respect to the designation of its proposed route, are to be deemed and treated to all legal intents and purposes as if they had never existed.

The Opinion of the Court in these cases concedes (Opinion, p. 11, at top):

"If the grant to the Atlantic and Pacific Com-
" pany had never taken effect, it may be that
" there is nothing which would interfere with
" the passage of the title to the Southern Pacific
" Company."

We respectfully submit that it makes no difference how much or how little the Atlantic and Pacific Company did, or whether its conditional grant ever took effect or not, the Forfeiture Act "avoided" it, *ab initio*, and, thereafter, the legal effect was as though there never was a time at which there was any title in the Atlantic and Pacific Company.

It is respectfully submitted that the language of the Opinion, in speaking of the effect upon the Southern Pacific Company's rights of the filing of the map of the Atlantic and Pacific Company, is *mutatis mutandis* unquestionably true if applied to the effect upon the Atlantic and Pacific Company's rights of the Forfeiture Act of 1886, viz.:

"Whatever title or right the Southern Pacific

" Company might acquire by a prior filing of its " map was absolutely displaced when the Atlantic " and Pacific Company's map was filed. * * * " It is to be regarded as though title passes as " of the date of the act, and to the company having " priority of grant, and, therefore, that in the eye of " the law it is NOW as though *there never was a* " *period of time during which any title to these* " *lands was in the Southern Pacific.* * * *

" Whatever may have been the dates of filing " by the respective companies, the case stands *as* " *though* the lands granted to the Atlantic and " Pacific had been identified in 1866 and title had " then passed, and *there never was* a title of any " kind vested in the Southern Pacific Company " (Opinion, p. 6).

[We respectfully submit that the doctrine of relation referred to in the foregoing citations is not applicable to the present case:

FIRST. On account of the special proviso in the 23d Section of the Act of 1871, the effect of which is presented in subdivisions IV. and V. of the petition in cases 862 and 863 submitted herewith, and

SECOND. On account of the effect upon the doctrine of relation of the supervening forfeiture under the Act of 1886, which is hereafter presented in subdivision II. of this petition.

We do not desire to ask the Court to consider that point here, but merely to refer to the portions of this petition and the petition in the other cases in which the same is presented.

We have cited these extracts from the Opinion of the Court only as enunciations of the legal effect of the doctrine of relation when and where it is applicable.]

When the Court, in its Opinion (p. 11), came to deal with the effect of the Forfeiture Act of 1886, we submit that it inadvertently fell into error.

The learned Court says:

"No one but the grantor can raise the question "of a breach of a condition subsequent. Con- "gress, by the Act of Forfeiture of July 6, 1886, "determined what should become of the lands for- "feited. It enacted that they be restored to the "public domain. The forfeiture was not for the "benefit of the Southern Pacific; it was not to "enlarge its grant as it stood prior to the Act of "Forfeiture. It had given to the Southern Pacific "all that it had agreed to in its original grant; "and now, finding that the Atlantic and Pacific "was guilty of a breach of a condition subsequent, "it elected to enforce a forfeiture for that breach, "and a forfeiture for its own benefit."

And again:

"By that Act of Forfeiture the title of the "Atlantic and Pacific was retaken by the General "Government, and retaken for its own benefit, "and not that of the Southern Pacific Company."

The proposition that no one but the grantor can raise the question of a breach of a condition subsequent, is no doubt entirely accurate, but we think the Court has erred in its interpretation of the effect of the language of the Forfeiting Act, by which the lands are "declared *forfeited and* "*restored to the public domain.*"

We submit that these terms merely constitute a re-entry for a forfeiture and a resumption by the United States, by reason of the forfeiture, of the title and interest which it had in the lands at the date of the forfeited grant.

The language is the equivalent of a statement that the lands are declared forfeited and resumed by the grantor.

It is true, as we understand the law, that the United States, and it alone, could exercise the right of declaring a forfeiture for breach of a condition subsequent. When it did exercise that right upon its own volition there resulted

from it those consequences, and all those consequences, which legally appertain to the entry of a lord or sovereign for a condition broken upon an estate on condition subsequent. One of these consequences, as we have already pointed out, is that the land is restored to the lord or sovereign as of the original estate as it existed at the date of the granting act, and *the forfeited grant* with all its incidents is swept away with the like effect as if such grant had never been made.

There is no special meaning to be attached to the term "restored to the public domain." The lands were a part of the public domain when the granting act was passed; they were, by the Forfeiting Act, restored to the public domain, that is, replaced just where they were *at the time of the grant.*

If it had been competent for Congress, which is doubtful, to attempt a forfeiture and a concurrent application to extraneous purposes of the lands in question, no such purpose or intention by Congress is manifested by the use of the term "*restored to the public domain.*"

It is hardly necessary to cite authorities in respect to this point. It will be observed by the Court that in the citation from the case

of *Schulenberg vs. Harriman*, hereinbefore quoted (page 8), this very term "*restored*" is used by this Court in referring merely to the act of forfeiture.

Again, in the *Repentigny* case, the term used by the Court as applicable to a forfeiture is "*reunion* "*with the public domain*" (5 Wallace, 267).

Authorities might be multiplied upon this point, but the meaning of the language seems to be clear and not such as to require discussion. The forfeiture is the act; the restoration to the public domain, as of the date of the granting act, is the result.

The questions to which the attention of the Court is thus drawn are questions of great and grave importance, which the appellees desire an opportunity to discuss before the Court upon rehearing of these causes.

II.

THE COURT ERRED IN APPLYING TO THIS CASE, *where forfeiture had supervened*, THE DOCTRINE (UNDER THE RULE IN RESPECT THERETO ANNOUNCED IN THE MISSOURI, KANSAS AND TEXAS CASE, 97 UNITED STATES) OF RELATION BACK OF THE ATLANTIC AND PACIFIC'S RIGHTS TO THE DATE OF ITS GRANT.

As we have already said, we present in the petition submitted herewith in cases 862 and 863 the question as to the effect of the proviso contained in the 23d section of the Act of 1871; but we do not wish to ask the Court to consider that point here.

The point which we desire to ask the Court to consider here is the effect of the Forfeiting Act upon the doctrine of relation under the *Missouri, Kansas and Texas case*, and the cases which followed it.

In its previous adjudications upon the subject of relation, the Court has sedulously guarded against the possible inference that this doctrine of relation was to be applied to cases where *forfeiture* supervened.

In the Missouri, Kansas and Texas case (97 U. S., 491, 498), the Court says:

"Our judgment is that the title of the plaintiff, attaching to the lands in controversy by a location of the route of the road, *being followed by a construction of the road*, took effect by relation as of the date of the act of 1862, so as to cut off all intervening claimants" &c.

This rule, the Court said:

"Will tend, we think, to prevent controversies between the grantees and those claiming under them respecting the title to the lands covered by their several grants, and *put an end to struggles to encroach upon the rights of others by securing an earlier location.*"

In *St. Paul R. R. vs. Winona, etc., R. R.* (112 U. S., 720, 726) the Court said:

"It results from this that no priority of title can be obtained by the earlier location of the line of the road, *provided this be done within the time limited for the forfeiture of the grant.*"

In *Sioux City R. R. vs. Chicago R. R.* (117 U. S., 406, 408) it was said:

"The title acquired from the United States relates back to the date of the grant, and *neither company can obtain any superiority of title* by

any act done by it, or by any omission to act, *provided there is no forfeiture of the grant.*"

The language of the Court, in these cases, is referred to by us, not as constituting a direct adjudication by it of the effect of forfeiture upon the doctrine of relation; it obviously does not extend to that point; but the language cited contains a pointed limitation, emphasized more strongly in each successive case, of the extent to which the Court deemed the doctrine of relation to be applicable. This language certainly justifies us in claiming with confidence that, at any rate, the Court has not, by its previous adjudications, established any such doctrine of relation as being applicable where a forfeiture has supervened.

The language of the Opinion in these cases that "it would be a waste of time to attempt a "re-examination of the questions, or a restatement "of the reasons which have established these as "the settled rules of law in respect to land grants" (page 3), is no doubt accurate in its reference to the doctrine of relation generally as affecting priority of grants; but is only applicable *to that class of cases*

in which the rule of law has been so settled and established, and is not applicable to the case expressly pointed out and referred to in the causes cited as *not* being covered thereby.

If, then, we are not to consider the cases above cited as deciding that the doctrine of relation does *not* apply where forfeiture has supervened, we are at least entitled to consider them as leaving the matter as an open question before this Court; and this Court has not, in its Opinion in these present cases, undertaken to in any wise overrule the suggestions as to the extent of the doctrine contained in the cases cited above, but has undertaken to apply a general doctrine to these cases, without observing, as submitted, the limitations which the Court had itself attached to the doctrine.

It is proper, therefore, to observe the considerations upon which the Court in the *Missouri, Kansas and Texas case* (97 U. S.) decided in 1878, adopted the doctrine of relation back of the title from the date of location to the date of the granting act.

It did not accord with the ordinary meaning of the precise language used in the granting acts,

If we follow this language and disregard all other considerations, although the grant is to be deemed a grant *in presenti* subject to a condition subsequent, it does not attach to any lands until location or designation of route, and the acts do not by their terms in any wise throw back the vesting of the estate in respect of the particular lands to the date of the granting act.

The Court, however, has, for satisfactory and sufficient reasons, in its opinion in the Missouri, Kansas and Texas case, and in other cases, established this doctrine of relation as applicable to these land grants in certain cases.

In the Missouri, Kansas and Texas case, it says that this construction of the grant will "put an "end to struggles to encroach upon the rights of "others by securing an earlier location."

The Court has stated in the cases at bar (opinion by Mr. Justice BREWER, p. 6) the considerations upon which this doctrine was established, as follows:

"Illy as it may accord with the common law "notions of identification of tracts as essential to a "valid transfer of title, it is fully settled that we "are to construe these acts of Congress as laws as "well as grants; that Congress *intends no scramble* "*between companies for the grasping of titles by*

"*priority of location*, but that it is to be regarded "as though title passes as of the date of the act, "and to the company having priority of grant."

This is the reason for the adoption of this legal fiction or doctrine of relation, as we understand it. It was adopted for the purpose of carrying out what was deemed to be the intention of Congress, that there should be no "struggles to encroach "upon the rights of others by securing an earlier "location," no "scramble between companies for the grasping of lands by priority of location," no races of diligence between rival grantees in respect to filing of maps of location.

Having regard to these considerations, the doctrine was, no doubt, a reasonable and proper one, and it has received the reiterated sanction of this Court, but with the limitation already pointed out—that it was only held to be applicable *where both roads had been constructed*, or *where no forfeiture had supervened.*

In cases where the road *had not been constructed*, and *a forfeiture had supervened*, it was obvious that the doctrine was not applicable, that there was no reason for the adoption of the legal fiction involved, and the Court has never given the doctrine its sanction in such a case.

Doctrines of relation, and legal fictions generally, are of course only to be applied by courts where the reasons upon which they have been adopted exist, and for the purpose of doing justice between parties.

Mr. Justice STORY, in an early case, said:

"It seems to be a rule founded in common sense, as well as strict justice, that fictions of law shall not be permitted to work any wrong, but shall be used *ut res magis valeat quam pereat* (3 Rep., 28, b.). And this rule, so equitable in itself, seems recognized in the common law (13 Rep., 21; 2 Vent, 200). And in respect to the doctrine of *relation*, this rule has been admitted in its fullest extent in civil cases (Brook Relation, 18; 1 H. 7, 17; Bro. Debt, 139; 6 Rep. 76, b.; 3 Rep., 28, b.). For it has been repeatedly adjudged, that *relation* shall never work an injury, 'and shall never be strained to the prejudice of a third person who is not a privy or a party to the act;' and further, that 'in destruction of a lawful estate vested, the law will never make any fiction' (3 Rep., 29; 2 Vent, 200)." [The Mars, 1 Gallison, 192, 204.]

This Court has never sanctioned the application of the fiction of relation in cases involving the title to property, except in furtherance of justice, and where it would not "work an "injury," according to the rules of the common law, the basis of our jurisprudence.

One of the early cases is *Landes vs. Brant* (10 How., 348), in which, for the protection of a purchaser of an imperfect Spanish title in the Territory of Missouri, the Court held that the confirmation of title related back to the filing of the claimant's petition before the Land Board.

The Court said that "*to protect purchasers* " the rule applies, 'that where there are divers acts " concurrent to make a conveyance estate, or other " thing, the original act shall be preferred; and to " this the other acts shall have relation,' as stated " in *Viner's Abr., tit. Relation*, 290 " (p. 372).

A similar use of the doctrine was afterwards made by the Court upon the authority of that decision, in cases of patents upon confirmed land claims in California, which were held to take effect by relation at the time when proceedings were instituted before the Land Commission under the Act of 1851.

Beard vs. Federy, 3 Wall., 478, 491;
Lynch vs. Bernal, 9 Wall., 315, 325.

Mr. Justice FIELD, speaking for the Court in the latter case, said: "That doctrine " [doctrine of relation] " is applied *only* to sub- " serve the ends of justice, and to protect parties

" deriving their interests from the claimant " pending the proceedings for the confirmation " of his title."

The Court, speaking by the same learned Justice, in *Gibson vs. Chouteau* (13 Wall., 92, 101) said:

" The doctrine of relation is a fiction of law " adopted by the courts *solely* for the purposes of " justice, and is only applied for the security and " protection of persons who stand in some privity " with the party that initiated proceedings for the " land, and acquired the equitable claim or right " to the title."

In Newhall vs. Sanger (92 U. S., 761, 766) the Court, speaking by Mr. Justice DAVIS, said:

" There is a fiction of law that a term consists " of but one day; but such a fiction is tolerated " by the courts only for the purposes of justice " (*Gibson vs. Chouteau*, 13 Wall., 92). To ante- " date the judicial rejection of a claim, so as to " render operative a grant which would be other- " wise without effect, does not promote the ends " of justice, and cannot be sanctioned."

It was avowedly in the interest and furtherance of justice that the Court applied the doctrine of

relation in controversies between adverse claimants of the same land under independent and surviving and existing public grants, as in the case of Rutherford vs. Greene's Heirs (2 Wheat., 196), relating to the title of General Greene to lands in North Carolina and the date at which it commenced. The State had, in 1782, made a grant to General Greene which, it was claimed by the appellant, the State revoked in 1783 by offering the lands for sale. The lands, however, had been surveyed under the Act of 1782; and, for the protection of the just rights of General Greene from spoliation by the State of North Carolina, this Court held that the survey attached his title to the lands as of the inception of the title.

Chief-Justice MARSHALL, in the course of his opinion in that case, said:

"The proposition is believed to be perfectly cor-
"rect, that the Act of 1783, which opened the
"land office must be construed as offering for sale
"those lands only which were then liable to appro-
"priation, not those which had before been indi-
"vidually appropriated. Whatever the legislative
"power may be, its acts ought never to be so con-
"strued as to subvert the rights of property, un-
"less its intention so to do shall be expressed in
"such terms as to admit of no doubt, and to show

" a clear design to effect the object. No general
" terms intended for property to which they may
" be fairly applicable, and not particularly applied
" by the legislature; no silent, implied and con-
" structive repeals ought ever to be so under-
" stood as to divest a vested right."

Numerous grants of land were made by Congress between 1860 and 1880 to aid in the construction of railroads, the grants being similar in their general provisions.

It was not, however, until many years after 1871, the year in which this grant to the Southern Pacific Railroad Company was made, that this Court had occasion, in the cases cited above, definitely and authoritatively to consider the principle by which controversies between railroad companies claiming title to the same lands, *upon the construction of their roads, and in the absence of forfeiture*, could be justly and equitably settled, and settled with due regard to the public interests, which would not be promoted by what may be called mere *races of diligence* between such companies in designating or locating their respective lines.

It was in furtherance of justice, as between parties, that this Court, in *such* cases of contest between rival claimants, who had built their roads,

each seeking to derive title under existing Federal grants, and each asserting that it had the better title to land as to which both assumed the Government had parted with all title, invoked this common law doctrine of relation, and declared the rule that priority of grant, as against priority of location, determined the rights of such rival claimants.

The application of the fiction of relation, in *such* cases, was strictly in the line of and in conformity with the principles of the common law, from which the doctrine of relation was derived, and from which, this Court has said, our system of jurisprudence was borrowed. (Charles River Bridge vs. Warren Bridge, 11 Pet. 420, 545).

The learned Court thus applied this doctrine of relation as a mere legal fiction for the purpose of settling rights *inter partes* between rival claimants who had constructed their roads, and fulfilled the objects of their grants.

The present suits, it will be observed, involve no controversy between *two grantees* in respect to the same land, each having fulfilled the conditions of its grant, and claiming the reward of its diligence proffered by the Government.

The United States is not suing, in the present

cases, as the successor of the Atlantic and Pacific Railroad Company, or by virtue of a title derived from that company, but sues as the lord or sovereign entering as of his *original estate in the land*, and seeking to quiet his own title as against third parties.

We, therefore, submit that this doctrine of relation from date of location back to date of grant has no application to the grant of the Atlantic and Pacific Railroad Company involved in the present cases between the United States and the Southern Pacific Railroad Company.

But if we are wrong in this, and the Court should now in these cases for the first time determine that, notwithstanding what was said in the cases already cited above, it would apply the doctrine of relation to a grant which had been forfeited for condition broken, we submit that the Court will not at the same time, *while it adopts this doctrine of relation as a means of interpretation of the granting act*, also reject *the fundamental doctrine of relation as applicable to the effect of forfeiture* in reinstating the United States in respect of these lands as of its former estate

with the same effect as if the Atlantic and Pacific grant had never been made. It will not with the same breath, we respectfully submit, extend the doctrine of relation as applied to the interpretation of the statute and refuse to recognize the fundamental, underlying doctrine of relation in respect to forfeiture, which has been a recognized attribute of the forfeiture of estates upon conditions subsequent ever since such estates have existed.

III.

THE COURT IN REACHING ITS DECISION HAS ERRED IN FINDING THE FACTS IN RESPECT TO THE DESIGNATION OF THE LINE OF RAILROAD OF THE SOUTHERN PACIFIC RAILROAD COMPANY CONTRARY TO THE ALLEGATIONS OF THE BILLS, THE ADMISSIONS OF THE ANSWERS AND THE STIPULATIONS OF THE PARTIES, THEREBY DETERMINING AGAINST THE APPELLEES A QUESTION OF FACT NOT OPEN TO, BUT EXCLUDED FROM, CONTESTATION ON THE PLEADINGS AND PROOFS, AND REVERSING THE DECREES AND DEFEATING THE TITLE OF THE DEFENDANTS UPON SUCH DETERMINATION THEREOF.

The grant to the Southern Pacific Railroad Company attached "at the time the *line* of said "road is *designated* by a plat thereof filed in the "office of the Commissioner of the General Land "Office" (Sec. 3 of Granting Act).

The bills in these cases allege that the Southern Pacific Railroad "accepted said grant, and on April "3, 1871, did *designate the line* of its said road "by a plat thereof, which it on that day filed in "the office of the Commissioner of the General "Land Office" (p. 10 in Case 921; p. 14 in Case 922).

The answers admit and allege that the Southern Pacific Railroad Co. "accepted said grant on April "3, 1871, and did *designate the line* of its said "road by a plat thereof, which it, on that day, filed "in the office of the Commissioner of the General "Land Office" (p. 24, in case 921; p. 32, in case 922).

To the like effect also are the stipulations of the parties in the cause, viz.: "It is hereby stipulated "that the Southern Pacific Railroad Company did, "on April 3, 1871, *designate the line* or route of "its road by a map filed in the office of the Com-

" missioner of the General Land Office on said " day " (p. 59, in case 921 ; p. 68, in case 922).

The decrees below dismissed the bills, from which appeals were taken by the United States to this Court.

We respectfully submit that upon this state of the pleadings no issue could be raised or argued in this Court as to whether or not the Southern Pacific Railroad Company did designate its line by the required plat on the day mentioned The question was not in issue below; proofs applicable and material thereto were not called for or presented; the Court below could not try any such question, and we respectfully submit that it was not open for trial or determination in this Court.

Notwithstanding this fact, however, the opinion deals very largely with a discussion of this question, ultimately determining it against the appellees and contrary to the allegations of the bill.

The Court adverts to the subject of the pleadings in its opinion as follows (p. 6):

" It is true that the bills of complaint in these " cases allege that ' said Southern Pacific Railroad " ' Company accepted said grant, and on April 3,

" ' 1871, did designate the line of its said road by
" ' a plat thereof, which it on that day filed in the
" ' office of the Commissioner of the General Land
" ' Office, and did construct and complete said road
" ' in the manner and within the time prescribed,
" ' except that it did not connect with the Texas
" ' and Pacific Railroad, and on April 3, 1871, the
" ' odd sections of public land for thirty miles in
" ' width on each side of said route, to which the
" ' United States had full title, not reserved, sold,
" ' granted, appropriated, and free from all claims
" ' and rights, were, by the Department of the In-
" ' terior, ordered withdrawn from sale and entry
" ' and reserved.'

" This allegation apparently refers by its terms
" to the line of definite location, as provided for in
" Section 3 of the Act of July 27, 1866, inasmuch
" as it uses the words of that section, to wit, 'at
" ' the time the line of said road is designated by
" ' a plat thereof.' And if this were a matter
" vital to the case, it might be necessary to re-
" quire that the bill be amended to conform to the
" proof, though it may be remarked that the alle-
" gations in the last part of the clause quoted, in
" respect to the withdrawal of lands, seem to indi-
" cate that the map of general route rather than
" that of definite location was referred to."

It is not supposed that, by the suggestion, "it might be necessary to require that the "bill be amended to conform to the proof," the Court would propose or intend, upon an appeal, to

amend the bill by striking out one of its plainest admissions, and inserting an allegation directly to the contrary thereof, and thereupon reversing the judgment below, and entering final judgment in the cause against the defendants upon the basis of such determination. It must, we think, be understood that the utmost limit to which the Court would go upon such a determination, would be to send the cause back with directions that the bill be amended as the Government might be advised, and that thereupon the defendant should answer the amended bill, and proofs be taken upon the basis of the new issue tendered in the cause. Although it may be conceded that the language of the opinion is not altogether clear upon this point, we do not understand that the Court would propose an amendment of the pleadings by reversing the allegation of the bill, and thereupon finding that such substituted allegation is true, without affording the defendants an opportunity to put it in issue, and prove the facts, and would ultimately dispose of the cause against the defendants upon that basis.

Furthermore, in this connection, it is perhaps proper to suggest that even the collocation, with

allegations in respect to the withdrawal of lands, to which attention is called in the Opinion, *does not exist in the amended bills*, the allegations in respect to the designation of line of road in both amended bills standing by themselves, and the allegations in respect to withdrawal of lands to which the Court draws attention being wholly omitted from the amended bills (p. 10, in Case, 921; p. 14, in Case 922).

The quotation in the Court's Opinion was inadvertently made, it will be observed, from the *original* bills (p. 2, Case 921; p. 2, Case 922).

In this matter it is obvious that the learned Court has inadvertently fallen into error as to the pleadings and their contents, and upon the whole subject of designation of line has inadvertently treated the cases as if the language of the act of 1866, instead of being as quoted above, conformed to the language of the granting act in the Northern Pacific case, where the grant was to attach "at the "time the line of said road is *definitely fixed*, "and a plat thereof filed in the office of the Com- "missioner of the General Land Office" (Sec. 3).

But, neither the term "definitely fixed," nor any other like term, is employed in the Atlantic and

Pacific act of 1866, the language employed there being "*at the time the line of said road ts* "*designated*" (Sec. 3), &c., which is the precise language of the allegations in the bills and the admissions in the answers in these cases.

There is much discussion in the opinion of the Court upon this subject of *definite location*, having reference to the decisions in cases involving the Northern Pacific land grant, which we respectfully submit do not apply to the Atlantic and Pacific Act of 1866, and the Texas Pacific Act of 1871.

We respectfully submit that, in view of all that is said in the Opinion upon this subject, the questions raised and discussed in the Opinion, and upon which a conclusion seems to be reached therein, this subject was not regarded in anywise immaterial or unimportant in the determination of these causes.

IV.

THE BILLS DID NOT ALLEGE OR PROFFER ANY ISSUE CONCERNING THE PERFORMANCE, BY THE ATLANTIC AND PACIFIC, OF ANY OTHER FURTHER OR MORE EFFICIENT ACT THAN A DESIGNATION OF LINE, OR LAY ANY FOUNDATION FOR A CLAIM THAT THE DESIGNATION OF LINE ALLEGED IN RESPECT OF THE SOUTHERN PACIFIC DID NOT HAVE THE EFFECT OF LOCATING ITS GRANT AND ATTACHING ITS GRANT TO THE LANDS COVERED THEREBY.

If something more than a "*designation of line*" is required in order to attach the grant to specific lands, the bills in these cases wholly fail to tender any issue as to the Atlantic and Pacific having performed any such further act.

The only allegation of the bills—the only issue proffered or tendered in the cause—is that the Atlantic and Pacific went to the extent of *designating its line;* that is to say, went to the same extent to which they expressly alleged and conceded that the Southern Pacific Company went. They do not allege—they do not

proffer any issue as to the performance of—any other further or more efficient act, or seek to confer upon the Atlantic and Pacific Railroad Company, or impress it in any wise with, any rights or claims, except those which attached upon and resulted from the *designation of the line.*

If such an issue as to further acts had been proffered or tendered, we should most certainly have put in issue any such claim, and the field of evidence opened upon such an issue, which was not opened upon the issues as they stood in the case, is obvious.

The issues in the case were strictly confined to those which appertain to the question of whether there had been a *designation of line* by the Atlantic and Pacific; that is to say, whether the Atlantic and Pacific had or had not done that thing which the bills averred, and the stipulations of the parties expressly admitted, that the Southern Pacific *had* done.

If any issue had been tendered as to whether the Southern Pacific Company had, on the 3d of April, 1871, done all acts necessary to attach its grant to the specific lands appertaining thereto,

we should have shown the uniform action in that regard of the Executive Department of the Government which is charged with the duty of receiving and passing upon the character and sufficiency—certainly as against the Government—of the maps which are filed, and upon which titles are based.

There has been an unbroken course of procedure on the part of the United States in that regard:

Secretary Schurz, May 8, 1879, *Cox vs. S. P. R. R. Co.:* "The tract is within the limits of the grant to the Company *which took effect April* 3, 1871" (6 Copp., 35).

Secretary Schurz, June 8, 1880, *Gower vs. S. P. R. R. Co.:* "The record shows the tract to be within the twenty mile limits of the grant of March 3, 1871, to said Company, *the right of which attached April* 3, 1871" (7 Copp., 104).

Secretary Teller, February 5, 1883, *Eberle vs. S. P. R. R. Co.:* "The tract is within the twenty miles (granted) limits of the company's grant by Act of March 3, 1871 (16 Stat., 579), *which became effective April 3d ensuing*" (10 Copp., 13).

Secretary Teller, May 31, 1884, *Hiller vs. S. P. R. R. Co.:* "The section lies within the granted limits of said road, *the right to which attached April* 3, 1871" (11 Copp., 118).

Secretary Teller, January 21, 1884, *S. P. R. R. Co. vs. Sturm:* "The tract is within 20 miles or granted limits of the grant by act of March 3, 1871 (16 Stat., 579), to the company, the right whereof attached (upon filing the map of designated route in your office) April 3 ensuing" (2 L. D. 546).

Acting Secretary Joslyn, August 22, 1884, *S. P. R. R. Co. vs. State of California:* "The tract is within the twenty miles (or granted) limits of the grant of March 3, 1871 (16 Stat, 573, 579), to the company, *the right whereof attached (upon filing the map of designated route in your office) April* 3, 1871" (3 L. D., 88).

Secretary Lamar, April 27, 1885, *S. P. R. R. Co. vs. Bryant*: "The tract is within the twenty miles or granted limits of the grant by Act of March 3, 1871 (16 Stat., 579) to the company, *the right whereof attached (upon filing the map of designated route in your office) April* 3d *ensuing*" (3 L. D., 501).

Secretary Lamar, January 30, 1886, *Sansom vs. S. P. R. R. Co.:* "The tract is within the twenty miles (granted) limits of the grant of March 3d, 1871 (16 Stat., 579), to the company, *which became effective April* 3, 1871" (4 L. D. 357).

Acting Secretary Muldrow, March 13, 1886, *S. P. R. R. Co. vs. State of California:* "The tract in controversy is in an odd-numbered section within the limits of the grant to said company by act of Congress, approved March 3, 1871 (16 Stat., 573). *The right of said company is held to have attached to the granted lands upon the filing of the map of designated route in your office on April* 3, 1871" (4 L. D., 437).

Secretary Noble, June 23, 1891, *Duncanson vs. S. P. R. R. Co.*, on review, said:

"In said departmental decision it was held that the land in question enured to the grant for the Southern Pacific Railroad Company, *which grant became effective April* 3, 1871, *the date of the definite location of the road*" (12 L. D., 664).

The same view was held by the Courts in California:

"The general right to the land, in this instance, "subject to the exceptions found in the act, vested

" at the date " of the passage of the Act, March " 3, 1871, and attached to the specific land, at the " moment of the filing of the plat in the office of " the Commissioner of the General Land Office, as " provided by Section 3 of the Act already cited " [Act of 1866].

S. P. R. R. Co. vs. Dull *et al.*, 10 Sawyer, 506.
S. P. R. R. Co. vs. Poole *et al.*, 12 Sawyer, 538.

The map upon which those cases were specifically adjudged was the map filed by the Company on April 3, 1871.

It would seem that these rulings of the Interior Department and the Circuit Court in California proceeded upon the doctrine of this Court in *Van Wyck vs. Knevals* (106 U. S., 360) and *Walden vs. Knevals* (114 U. S., 373), and the view that when the map designating the line of the road of the Southern Pacific Company, as filed on April 3, 1871, was accepted by the Secretary of the Interior, the route became established and definitely fixed for the purpose and with the effect of attaching the grant to the adjoining sections.

The cases of *Van Wyck vs. Knevals* and *Walden*

vs. Knevals related to the grant to the St. Joseph and Denver City Railroad Company, which filed but one map, which was called by this Court "*the map designating the route of the road*"; and the Court said (*Walden vs. Knevals*, p. 374) that "when "the route was adopted by the company and a "map designating it was filed with the Secretary "of the Interior, and accepted by that officer, "the route was *established.* In the language of "the act it was 'definitely fixed,' and could not "be the subject of further change so as to affect "the grant, except by legislative consent; and "that *no further action was required on the part* "*of the company.*"

The grant, said the Court, then attached to the surface of the earth.

In reliance upon the action of the Interior Department and of the Courts in respect to the matter, out of the over 1,000,000 acres, involved in this overlap between the Atlantic and Pacific and the Southern Pacific, large amounts of land have been already sold to the public.

The appellees respectfully submit, in this connection, that the construction given to the Act of 1866, and the effect attributed to the action of

the Southern Pacific Company in respect to the due location of the line of its route, on April 3, 1871, by the Department of the Interior, through a period of twelve years, under four successive Secretaries, as well as by the Circuit Court in California, should be deemed by this Court, if the question were really before it, not only potential, but conclusive of the matters thus determined, so that the soundness of the views expressed by such executive and judicial decisions could not, at this day, be called in question by the United States, agreeably to the principles of right and justice enunciated by this Court in *United States vs. Burlington, &c., R. R. Co.* (98 U. S., 341), the *Maxwell Land Grant Case* (121 U. S., 325), *Heath vs. Wallace* (138 U. S., 582) and other kindred adjudications.

It seems at least a work of supererogation to cite authorities to this Court that it will not determine a cause against a party upon issues not made by the pleadings, but wholly *contrary* to the pleadings and admissions of parties.

If the United States proposed to impeach the title of the defendants to the lands in controversy upon the ground that the Southern Pacific Rail-

road Co. did *not* duly designate its line on the 3d of April, 1871, it is respectfully submitted that it was indispensably necessary that the bill should contain an express averment upon that subject, and tender to the defendants a precise issue upon that question. This Court has said in the case of Rubber Co. vs. Goodyear, 9 Wallace, 788, 793:

"The examination of the case by the Court is "confined to the *issues* made by the pleadings. "Proofs without the requisite allegations are as "unavailing as such allegations would be without "the proofs requisite to support them."

And in Foster vs. Goddard, 1 Black, 506, 518:

"In equity proceedings the proofs and allegations "must agree. A party can no more succeed upon "a case proved, but not alleged, than upon a case "alleged, but not proved."

And in Simms vs. Guthrie, 9 Cranch, 19, the Court, speaking by Chief-Justice MARSHALL, said that "it is certainly a correct principle that the "Court cannot decree to any plaintiff, whatever "he may prove, more than he claims in his bill. "Nothing further is in issue between the parties."

In Harrison and others vs. Nixon (9 Peters 483,

502, 503, 504,), the Court, speaking by Mr. Justice STORY, said:

"The cause having come before this Court for argument upon the merits; a question occurred whether the frame of the bill, taken by itself, or taken in connection with the answer, contained sufficient matter upon which the Court could proceed to dispose of the merits of the cause, and make a final decision. The bill contains no averment of the actual domicile of the testator at the time of the making of his will, or at the time of his death, or at any intermediate period. Nor does the answer contain any averments of domicile which supply these defects in the bill, even if it could so do, as we are of opinion, in point of law, it could not. Every bill must contain in itself sufficient matters of fact, *per se*, to maintain the case of the plaintiff; so that the same may be put in issue by the answer and established by the proofs. The proofs must be according to the allegations of the parties: and if the proofs go to matters not within the allegations, the Court cannot judicially act upon them as a ground for its decision; for the pleadings do not put them in contestation. The *allegata* and *probata* must reciprocally meet to conform to each other. * * *

"The point was never brought before the Circuit Court for consideration; and, consequently, was not acted on by that Court. It did not attract attention (at least as far as we know) on either side, in the argument there made; and it was prob-

ably passed over, (as we all know matters of a similar nature are everywhere else,) from the mutual understanding, that the merits were to be tried, and without any minute inquiry, whether the merits were fully spread upon the record.

"If this be the true posture of the present case, then the bill should allege all the material facts, upon which the plaintiff's title depends; and the final judgment of the Court must be given, so as to put them in *contestation* in a proper and regular manner."

The decree of this Court accordingly was that the decree of the Circuit Court be reversed, and that the cause be remanded to that Court for further proceedings, with directions to allow the bill to be amended, and the answers and pleadings also to be amended to conform thereto, and proofs to the new matter also to be taken, and such other proceedings to be had in the cause as to law, equity and justice should appertain.

The above opinion was, it will be observed, in a case where there was a *want* of allegation as to a material point; *a fortiori*, of course, the Court will not *reverse* an allegation of a material fact made by the bill and admitted by the answer.

We refer also to the following cases: Harding

vs. Handy, 11 Wh., 103; Tarver vs. Tarver, 9 Peters, 174, 178; Piatt vs. Vattier, 9 Peters, 405, 416; Boone vs. Chiles, 10 Peters, 177; Garland vs. Davis, 4 Howard, 153; St. Louis vs. Knapp Co., 104 U. S., 658, 661; Smith vs. Woolfolk, 115 U. S., 143, 148, 149.

But, as we have already suggested, this is not a question for authorities, or in respect of which discussion is necessary. It relates to a fundamental principle of our law and of all judicial jurisdiction and determination.

Nor is it necessary to do more than refer to the authorities as to the limits of a judgment or decree as an estoppel, which hold that a judgment is *res judicata* only as to the issues actually litigated and necessarily involved in the decision.

Packet Co. vs. Sickles, 20 How., 333; Packet Co. vs. Sickles, 5 Wall., 580; Burlen vs. Shannon, 99 Mass., 200; People vs. Johnson, 38 N. Y., 63.

V.

THE ONLY QUESTION PUT IN ISSUE BY THE BILLS IN RELATION TO THE TWO RAILROAD GRANTS WAS WHETHER OR NOT THE LANDS IN CONTROVERSY WERE "*upon the same general line*" OF BOTH ROUTES, AS DESIGNATED BY THE COMPANIES, RESPECTIVELY, WITHIN THE MEANING OF THE FIRST PROVISO TO SECTION 3 OF THE ACT OF JULY 27, 1866, CALLING FOR A DEDUCTION IN SUCH EVENT, VIZ:

"*Provided*, THAT IF SAID ROUTE SHALL BE
"FOUND UPON THE LINE OF ANY OTHER RAIL-
"ROAD ROUTE TO AID IN THE CONSTRUCTION
"OF WHICH LANDS HAVE BEEN HERETOFORE
"GRANTED BY THE UNITED STATES SO FAR
"AS THE ROUTES ARE *upon the same general*
"*line* THE AMOUNT OF LAND HERETOFORE
"GRANTED SHALL BE DEDUCTED FROM THE
"AMOUNT GRANTED BY THIS ACT."

Judge SAWYER, in his opinion, said:

"But the line of the Southern Pacific road is not
"on the line of the 'Atlantic and Pacific' route,
"as designated on what is claimed to be its map
"of location. The two roads are not 'upon the
"same general line.' They simply cross each
"other."

(Record, p. 55, in Case 922.)

We respectfully submit that, when the Court below determined that issue, it determined the only issue raised by the bills upon this subject.

This Court has not reached a different conclusion from the Circuit Court upon this point. This Court says (Opinion of Mr. Justice BREWER, p. 10): "That proviso may not be technically and "strictly applicable to this case, in that a road "crossing another may perhaps not be said to be "found upon the line of such other road, or to be "upon the same general line."

VI.

NO ISSUE WAS TENDERED OR TRIED IN RESPECT TO THE LINE UPON WHICH THE SOUTHERN PACIFIC ROAD WAS BUILT.

In response to the questions raised in the Opinion of the Court as to the line upon which the road was built (none are raised by the pleadings), it may be proper to submit the following suggestions:

The following stipulation was made between the parties in the cause:

"It is admitted that a railroad was built from "Tehachapi Pass by way of Los Angeles to "the Colorado River at Fort Yuma, upon the line "shown upon the map and designated route last "above referred to, [the map of April 3, 1871], "and was constructed and operated in the time "prescribed by the Act of Congress of March the "3d, 1871, and is still being operated."

Case 921, pp. 59, 60.
Case 922, p. 68.

Some confusion may have been introduced into the case by various documents which seem to have got into the record in one way and another, but to be of no materiality to any of the issues in the case.

For example, the exemplification of a diagram found in the Land Office referred to in the opinion (p. 8).

This is a copy of an unofficial paper made by some clerk, and having no sanction or authority. We submit that the objections made to this tracing at page 249 of the record in Case No. 863 were well taken, and that a tracing of an unofficial paper merely because the paper is found in the Land Office can have no value or importance attached to it.

The minutes of proceedings of meetings of Boards of Directors (same page of Opinion):

Those of April 10, 1874 (p. 77 of Record in 921), are in conflict with the diagram last above referred to—either the diagram is wrong or the resolutions do not show the line built. The point of beginning of the 50 miles therein mentioned is at some distance away from the red line shown in the diagram.

Those of September 8, 1874 (p. 78 of Record in 921), relate to the location of a portion of the Southern Pacific Railroad Company's *Main Line* under the 18th Section of the Act of 1866, and have no reference to the Branch-line Grant of 1871, under consideration in these cases.

Those of October 1, 1874 (p. 79 of Record in 921), relate to payment for work done as per Map A A of April 10, 1874.

None of the lands in suit lie opposite the section of road referred to in the resolutions.

The above only shows how readily mistakes may occur in relying upon detached portions of evidence which are not material to any issue in the cause.

As we have said, there was no issue as to the constructed line of road or its location, and the stipulation of the parties expressly found and stated that the construction was upon the line shown by the map of April 3, 1871. If there were any variations from that line, it is obvious that they could not have been substantial or material.

It is not to be understood, in what has been already said in this petition in reference to date of designation of line, or the limitation of the issues tried and determined below and open to determination in this Court, that we in anywise concede that, even if some further acts beyond designation of line should be held to be requisite to attach the grant to specific lands, and even if it should be held that the Atlantic and Pacific Company had performed those acts in 1872, and that the Southern Pacific Company had not performed those acts until the construction of its road, or even until the filing of reports of Commissioners showing the line of its constructed road, and if the Court could try and determine these questions upon these appeals, in the absence of suitable pleadings and issues, our rights would be in

anywise less than those which we have heretofore claimed, and which were accorded by the Court below.

Even if a title to specific sections had vested in the Atlantic and Pacific Company before such steps were taken by the Southern Pacific Company as may be held to be requisite to attach its grant to specific sections, our rights nevertheless stand unaffected by that fact; first, by reason of the effect of the proviso in the 23d Section which is presented in the petition for rehearing in cases 862 and 863 filed herewith, to which reference is hereby made; and, secondly, because no title could have ever vested in the Atlantic and Pacific Railroad Company except subject to the condition subsequent which has not been performed, and for which re-entry has been made, which has defeated and avoided the entire estate of the Atlantic and Pacific Railroad Company with the like effect as if that estate had never existed.

The doctrines of relation and forfeiture are elsewhere fully presented. The *excepting* clause of the grant would not be applicable to the cases under consideration in any event. That point is specifically covered by the

decision of this Court in the recent case of the *Saint Paul and Pacific R. R. Co. vs. The Northern Pacific R. R. Co.*, where the Court says: "We are of opinion that the exception "in the act making the grant to the Northern "Pacific Railroad Company was not intended to "cover other grants for the construction of roads "of a similar character, for this would be to "embody a provision which would often be repug- "nant to and defeat the grant itself" (139 U. S. p. 1, 17).

VII.

THE COURT ERRED IN ITS DECISION IN RESPECT TO DESIGNATION OF LINE UNDER THE ATLANTIC AND PACIFIC MAPS AND THE EFFECT AND OPERATION THEREOF.

The allegations of the bills in respect to the character of these maps followed the language of the 3d section of the granting act, and described them as maps *designating the line* of the Atlantic and Pacific road. They claimed for them no differ-

ent function or character than those which resulted from the like allegations (also in the precise language of the granting act) in respect to the Southern Pacific designation of line.

As a matter of fact there is coupled with the allegation of the bill in respect to designation of the line of the Atlantic and Pacific the allegation in respect to the withdrawal of lands; and, if weight were to be attached to the suggestion of the Opinion, at the top of page 7, that joinder of an allegation in respect to the withdrawal of lands would indicate that a map of general route rather than that of general location was referred to, the allegation of the amended bills in respect to the Atlantic and Pacific designation would seem to be affected thereby, and such allegation would thereby be contrasted with the allegation of the amended bills in regard to Southern Pacific designation of line with which the allegation of withdrawal of lands is not coupled in those bills.

But, after all, we do not think that the Court will attach importance to this collocation. The bills no doubt were intended to allege, both in respect to the Atlantic and Pacific and Southern Pacific, compliance with the requirements of the third section of the granting act by alleging a *de-*

signation of line in the language of the act itself.

The point, in respect to the Atlantic and Pacific designation of route, raised by the answers was that the attempted location—from the Needles to the Pacific Ocean *at San Francisco*—was an unauthorized one, and that, therefore, the attempted designation of line was inoperative and ineffectual.

We respectfully submit that the Court has erred in its opinion in respect to this attempted designation of line, and the claims made in reference thereto.

The Opinion (p. 5) says:

"The Atlantic and Pacific Company claimed "that, under its charter, it was authorized to "build a road from the Colorado River to the "Pacific Ocean, and thence along the coast up to "San Francisco."

We do not so understand the claim made by the Atlantic and Pacific Company. The granting act authorized it, after reaching the Colorado River on the eastern boundary of California, to build "thence by the most practicable and eligible route "to the Pacific." There is absolutely nothing in

the act upon which a claim, or the shadow of a claim, could be predicated or suggested that, after reaching the Pacific, the Company had a right to build any further or other line.

Nor is it our understanding that the Atlantic and Pacific ever made any such claim. The claim, as we have always understood it, was that, as it had a right under the act to build "by the most practi- "cable and eligible route to the Pacific," it could select its own terminal point upon the Pacific wherever it chose. It chose to select San Francisco as such terminal point, and designated a line, in accordance with that election, from the Needles to San Francisco. As a matter of fact, that line passed through San Buenaventura, a point which was upon the Pacific Ocean.

The Atlantic and Pacific claimed a land grant from the Needles to San Francisco not upon any theory that after it reached the Pacific Ocean it had a right to build any further line, but that it had a right to build a line which should strike the Pacific Ocean at such point as it might select, and that it had selected San Francisco as such terminal point.

This was opposed upon two grounds:

FIRST. That the line given to the Atlantic and Pacific was from the Colorado River "by the most

"practicable and eligible route to the Pacific;" and that such a route clearly referred to a route which would reach the Pacific at San Pedro or in that vicinity, and

SECOND. That the route from the crossing of the Colorado River to San Francisco had been expressly given to the Southern Pacific (Sec. 18 of Act of 1866), which obviously excluded any possible theory that the Atlantic and Pacific was authorized to adopt San Francisco as its Pacific terminal.

Again, the Opinion states (p. 5):

"When the four maps were filed, and in 1872, "the Land Department, holding that the Atlantic "and Pacific Company was authorized to build "not only from the Colorado River directly to the "Pacific Ocean, but also thence north to San "Francisco, approved them as establishing the "line of definite location."

As we understand the evidence in the case, the proposed route to San Francisco—that is, the adoption of San Francisco as the point on the Pacific Ocean to which the Atlantic and Pacific road might be built—was approved by the letter of Acting Secretary Cowen, dated 11th April, 1872, printed on page

117 of the Record in Case 921; but, although that letter seems to refer to maps as showing the entire route of the road to San Francisco, the other two of the four maps referred to were not filed in the Interior Department until August 15, 1872, and are the two maps then filed with the Secretary of the Interior, which were sent to the Commissioner of the General Land Office by Secretary Delano with his letter of 16th April, 1874, printed on page 119 of the Record in Case 921, and there referred to as "two maps *designating the line* of said railroad," &c., &c.

There was never any decision, so far as we have heard, authorizing the Atlantic and Pacific to build *to the Pacific Ocean, and thence to San Francisco or any other point*, but there was a decision which held—contrary to the statute, as we understood it, and as the Court now interprets it—that the Atlantic and Pacific had the right to select San Francisco as its Pacific Ocean terminal point.

Now, the controversy was not, as we have said, in respect to any *extension or addition* to the line after it reached the Pacific Ocean (there was not a *scintilla* of basis for such a claim), but simply as

to whether or not the Atlantic and Pacific had the right to select San Francisco as its Pacific Ocean terminal point, and, in our view of the matter, such an erroneous selection of its Pacific Ocean terminal point was fatal to its designation of line.

If, as the Court seems to have understood, there had been a *bona fide* claim on the part of the Atlantic and Pacific that after reaching the Pacific it had a right to add to or extend its road north to San Francisco, it might well be that its claim to this addition or extension should not impair its rights in respect of its road to the Pacific; but when the only shadow of claim was to build to the Pacific, if it chose to undertake to select San Francisco as its Pacific Coast Terminal, in the face of the express grant of that road to the Southern Pacific, under the 18th Section of the Act of 1866, did it not do so at its own risk of the validity of such a selection. And if that selection was unauthorized—as it obviously was—did it not follow that the line predicated upon that empty—and, we submit, manifestly frivolous—claim fell to the ground?

We submit a single suggestion on the subject of the intent of Congress in respect to the lands which the Southern Pacific was to receive under the 23d Section of the Act of 1871.

The Court says (Opinion, pp. 9, 10):

"Neither can it fairly be said that it was the "intent of Congress that these lands should pass "conditionally to the Southern Pacific Company. "Good faith must be imputed to Congress. It "cannot be supposed that Congress intended to "give to the Southern Pacific Company that "which it had already given to the Atlantic and "Pacific Company."

And again (pp. 10, 11):

"The question is asked, supposing the Atlantic "and Pacific Company had never located its line "west of the Colorado River, would not these "lands have passed to the Southern Pacific Com-"pany under its grant? Very likely that may be "so. The language of the Southern Pacific Com-"pany's grant is broad enough to include all "lands along its line, and if the grant to the "Atlantic and Pacific Company had never taken "effect it may be that there is nothing which "would interfere with the passage of the title to "the Southern Pacific Company."

We respectfully submit that the intent of Congress was that there should be granted to the South-

ern Pacific Company, as there had been granted to other land-grant roads, the alternate odd-numbered sections of land within the prescribed distance from its line, except such lands as were *excepted* under the granting clause for Mexican grants, pre-emption and homestead claims and the like, and subject to the proviso that the Southern Pacific should not take away from the *Atlantic and Pacific Railroad Company* any lands to which it might become entitled.

There was no purpose or intent that, if the Atlantic and Pacific *located* its line (whether it built or not), a strip of land thirty miles on either side of the line—that is, sixty miles wide—should be cut through and out of the Southern Pacific grant; and that, if the Atlantic and Pacific did not earn the land, the United States was to have it.

Such, we submit, was not the legal effect of what Congress did; and we submit that such was not the purpose or intent of Congress in the action which it took in respect to the matter.

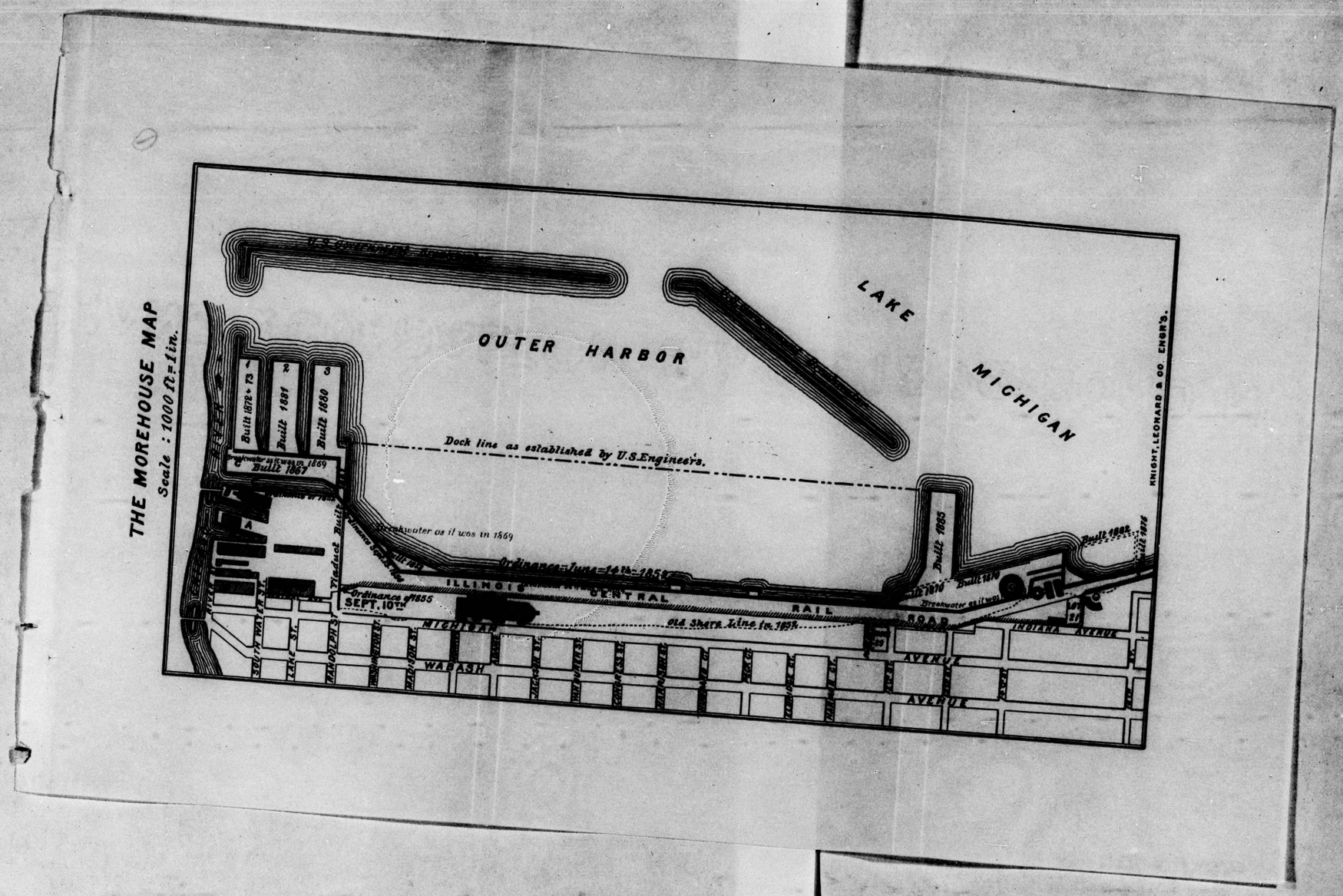
To the end, therefore, that equity may be done, and that this Court may, upon fuller consideration, and with the advantage of oral argument, revise

its former decision and opinion in the above-entitled cases, the appellees pray that the Court may be pleased to take their suggestions under a careful consideration, and grant a rehearing of said cases, and that a decree may be rendered affirming the decree below, or that a decree be rendered reversing the said decree and remanding the cases to the Circuit Court, for such further proceedings to be had in that Court as to law, equity and justice shall appertain.

JAMES C. CARTER,
J. HUBLEY ASHTON,
Of Counsel for Appellees.

We, JAMES C. CARTER and J. HUBLEY ASHTON, of counsel for the appellees in the above-entitled cases, do hereby certify that we have examined the foregoing petition, and that we are of opinion that the points and grounds presented in the same in support of the application therein are well founded in law, and that there is good and just reason for the filing of such petition, and that the same is not presented for any purpose of delay.

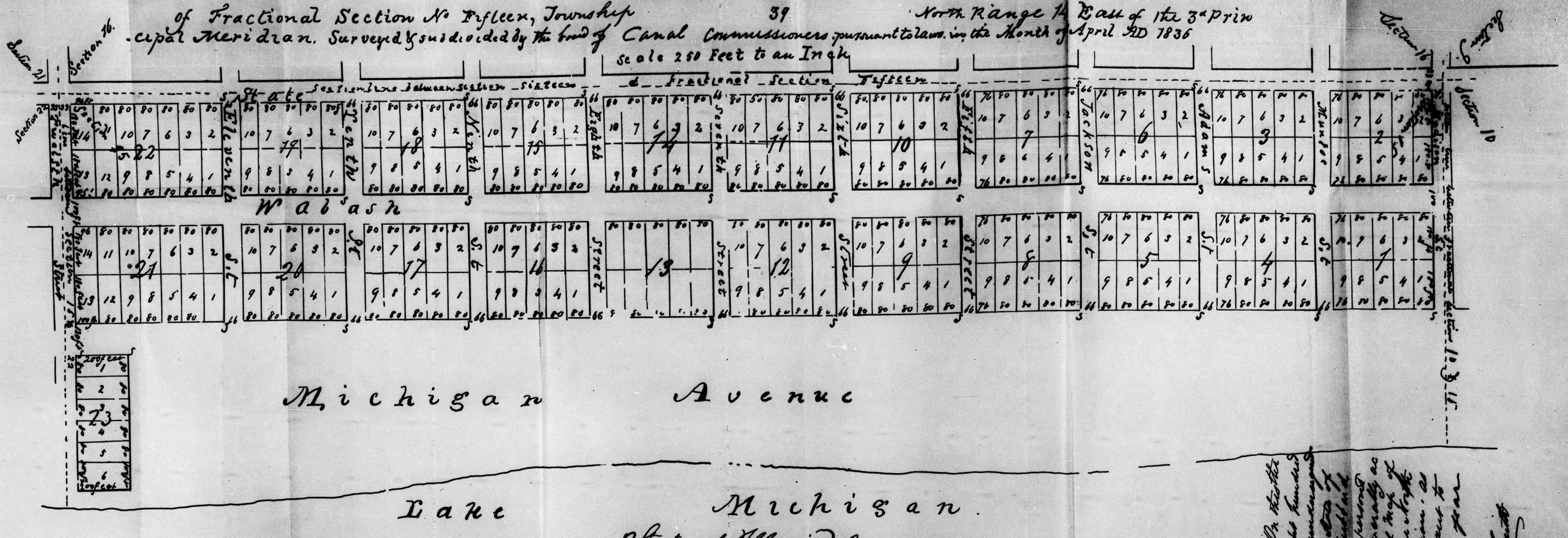
JAMES C. CARTER.
J. HUBLEY ASHTON.


THE MOREHOUSE MAP
Scale : 1000 ft.=1in.
OUTER HARBOR
LAKE
MICHIGAN
Dock line as established by U.S.Engineers.
Built 1878
Built 1881
Built 1880
Built 1867
Built 1885
Built 1886
Breakwater as it was in 1869
Ordinance June 14th 1852
Ordinance 9th 55 SEPT. 10th
ILLINOIS CENTRAL RAIL ROAD
Old Shore Line in 1852
MICHIGAN AVENUE
WABASH AVENUE
INDIANA AVENUE
KNIGHT, LEONARD & CO. ENGR'S.

M A P

of Fractional Section No Fifteen, Township 39 North Range 14 East of the 3d Prin-
cipal Meridian. Surveyed & subdivided by the Board of Canal Commissioners pursuant to laws in the Month of April AD 1836

Scale 250 Feet to an Inch



I Edward B Talcott, assistant Engineer in the employment of the Board of Commissioners of the Illinois and Michigan Canal, do hereby certify that the above is a correct plat or map of fractional Section No 15. Township 39 North Range 14 East of the third principal Meridian adjoining or cornering with the Original Town of Chicago as subdivided and laid off into Lots &c under the direction of said Board of Commissioners, and that the same portrays and sets forth the size, width and length of the Lots, also the true and fixed width of the Streets and Avenues. The letter S at the corners of the fraction and blocks, as marked, denotes where Stones are planted deep in the ground from which to make future Surveys.
Given under my hand at Chicago the thirteenth day of June AD one thousand eight hundred and thirty six.

(Signed) Edw B Talcott
Assistant Engineer

State of Illinois }
Cook County } ss

We the undersigned, Commissioners of the Illinois and Michigan Canal, in pursuance of the Statute in such case made and provided, have caused Fractional Section number fifteen (15) Township thirty nine north, Range fourteen East, adjoining or cornering with the Original Town of Chicago to be laid off into Lots &c. as appears by the above plat planted Stones as designated, at different corners, from which to make future Surveys, and we do hereby acknowledge the same, the full width and length of the lots, and the width of the Streets and Avenues as marked delineated and laid down, as and for the true plat or Map of the Subdivision of said Section.
Given under our hands and Seals at Chicago the thirteenth day of June AD 1836.

W F Thornton LS.
W B Archer LS.
G S Hubbard LS.

Recorded July 20th 1836
Richd J Hamilton Recorder.

Copied from the original MAP by Jas C Lane
Asst Engr I.C.R.R.

(Endorsed)
Filed June 22. 1887
Wm H. Bradley
Clerk

State of Illinois, County of Cook } ss
I do hereby certify that the foregoing is a true and correct copy of the original Map of Fractional Section No Fifteen in Township No Thirty nine North of Range No Fourteen East of the Third Principal Meridian as the same appears of record in my office.
In Witness Whereof I have hereunto set my hand and affixed the Seal of the Recorder's Office of Cook County this 22nd day of June A.D. 1887.

Recorder's Office Cook County Ill.

(Signed) Sherman M. Booth
Recorder

Fort Dearborn Addition to Chicago.

No. 587
United States
v.
Ills and Mich R R Co et al
p. 22

Chicago River

333 ft

300 ft

S 82° W 446.5 ft

S 7° W 226.5 ft

Harbor St

River

Pier

South 82° East

209 ft

Dock St.

60 ft.

South Water Street.

Wabash Street

Michigan Avenue

State Street

Lake

Randolph

Washington

Street.

700 ft.

Lake Michigan.

Public Ground forever to remain vacant of Buildings.

Fort Dearborn Addition to Chicago as represented on the adjacent plat is laid out into Blocks lots & Streets upon & embraces the whole of the South west fractional quarter of Section ten (10) Township thirty nine (39) North Range N: fourteen (14) East of the 3d principal meridian.

The largest figures on said plat indicate the number of the Blocks. The next smaller figures near the centre of the lots, show the number of the lots respectively in each Block. The next size of figures still smaller in the interior side of the boundary of the several streets, and on the division lines of the lots, represent the measurement of the respective lots in feet and inches.

The figures written transversely to and in the Street and alleys, show the width of the same in feet at different points and the figures on the exterior lines of the Blocks represent the measurment of the Blocks upon which they stand.

From the west boundary of the said fraction of Section (10) is laid off and appropriated 60 feet in width as an addition to State Street, and from the South boundary of said Section 40 feet as an addition to Madison Street.

The width of the rear of the Water lots bounded upon the Chicago River is determined and established by posts set at the intersection of the lines of the lots and Streets with meanders of the river as shown by the notes thereof entered upon the meander lines The lines between the lots in Block (2) are run at right angles to the N.W. line of River Street.

The Public Ground between Randolph & Madison Streets and fronting upon Lake Michigan is not to be occupied with buildings of any description.

At the S E corner of Block (13) at the angle of Wabash and Washington Streets is set a lime stone 4 by 6 inches and 2 feet long, at least 18 inches below the natural surface of the ground. Also another stone of similar description is set at the angle formed by the junction of River with South Water Street in Block (3) and also one other stone of like dimensions, at the E corner of Block (7) at the angle of South Water Street & Michigan Arenue.

At the corner of Sections 9. 10. 15 & 16 is a stone near the centre of State Street, which was set by the Commissioners of the Illinois & Michigan Canal in 1836.

The bearing of South Water, Lake, Randolph, and Washington, is N 83° E The bearing or course of Madison Street is N. 82° E. The course of River Street from South Water Street to Harbor Street is N. 29° E. thence to Lake Michigan N. 83° E.

Course of State & Wabash Street and Michigan Avenue is N 8° 5' W All bearings were taken without any variation of the Compass

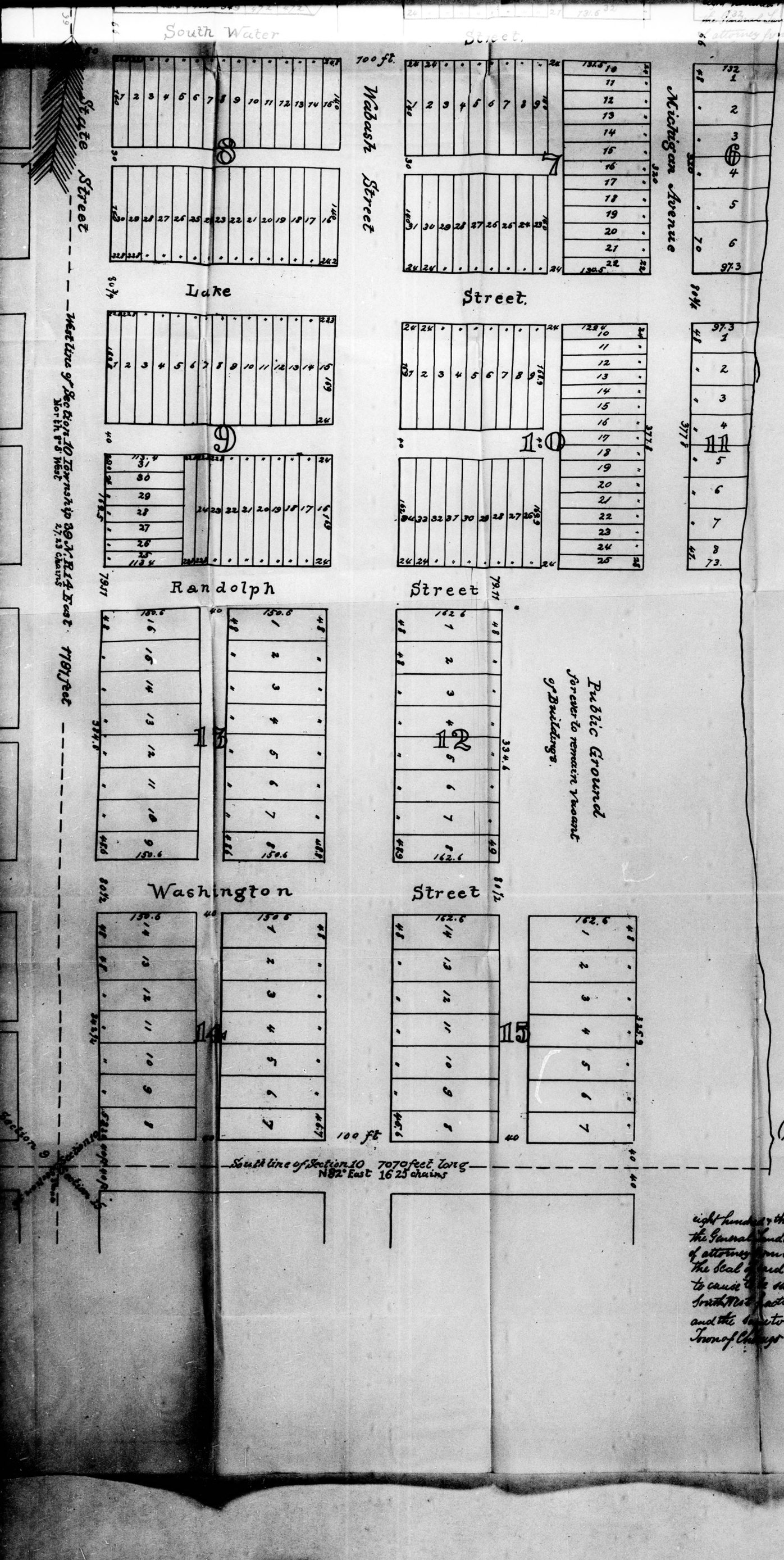
For J. R. Pomeroy Sec. at War
M Pickard Agent P R Affy

I certify that Fort Dearborn Addition to Chicago is laid out upon the South West fractional quarter of Section (10) Township (39) Range N° (14) East of the 3d principal meridian, and that the within plat is a true delineation of the survey thereof, and also the foregoing field notes of the same are correct as shown by the records preceding the date hereof

Dated at Chicago
June 6th 1837

A. F. Smith
County Surveyor

(Scale 100 feet to one inch)



From the west boundary of the [illegible] of Section (10) is laid off and appropriated 80 [illegible] an addition to State Street, and from the South boundary Section 40 feet as an addition to Madison Street.

The width of the rear of the Water Lots bounded upon the Chicago River is determined and established by posts set at the intersection of the lines of the lots and Streets with meanders of the river as shown by the notes thereof entered upon the meander lines The lines between the lots in Block (2) are run at right angles to the N.W. line of River Street.

The Public Ground between Randolph & Madison Streets and fronting upon Lake Michigan is not to be occupied with buildings of any description.

At the S E corner of Block (13) at the angle of Wabash and Washington Streets is set a lime stone 4 by 6 inches and 2 feet long, at least 18 inches below the natural surface of the ground. Also another stone of similar description is set at the angle formed by the junction of River with South Water Street in Block (3) and also one other stone of like dimensions, at the E corner of Block (7) at the angle of South Water Street & Michigan Avenue.

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Course of State & Wabash Street and Michigan Avenue is N 8° 5' W All bearings were taken without any variation of the Compass

For J. R. Pinsell Sec. at War
M Pickard Agent & Atty

I certify that Fort Dearborn Addition to Chicago is laid out upon the South West fractional quarter of Section (10) Township (39) Range N° (14) East of the 3d principal meridian, and that the adjacent plat is a true delineation of the survey thereof, and also that the foregoing field notes of the same are correct as done by me immediately preceding the date hereof.

Dated at Chicago
June 6th 1837.

Asa F. Bradley
County & City Surveyor

[See Letter to Secy of War Feby 24 1849 Miss Doc Vol 23 p. 197]

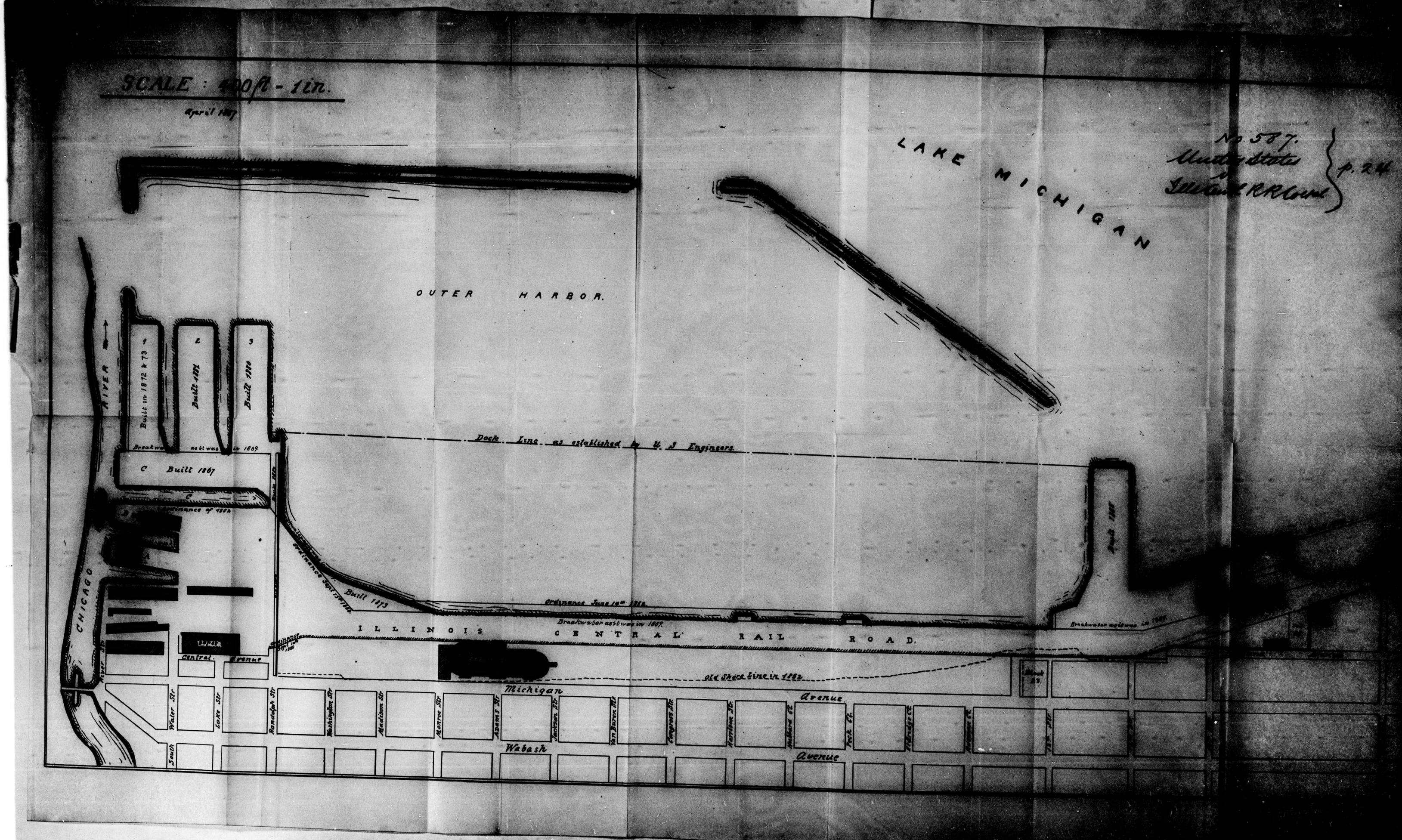
(Scale 100 feet to one inch)

State of Illinois }
Cook County }

Be it remembered that on this seventh day of June in the year of our Lord one thousand eight hundred & thirty nine before me Henry Brown a Justice of the peace in & for said County, came Justus Post Clerk and Solicitor of the General Land Office and agent of the War Department of the United States to me personally known and [illegible] power of attorney from the Secretary of the Department of War of the United States specially & officially by said Secretary under the Seal of said Department by direction of the President of the United States authorizing him the said [illegible] and to cause the same surveyed, plotted, duly acknowledged and recorded as an addition to the Town of Chicago Illinois The South West fractional quarter of Section ten heretofore reserved for military purposes and the Site of Fort Dearborn and the said Justus Post did acknowledged the foregoing map to be the map and plat of the Fort Dearborn Addition to the Town of Chicago and that the United States of America are the sole proprietors and the owners of the same

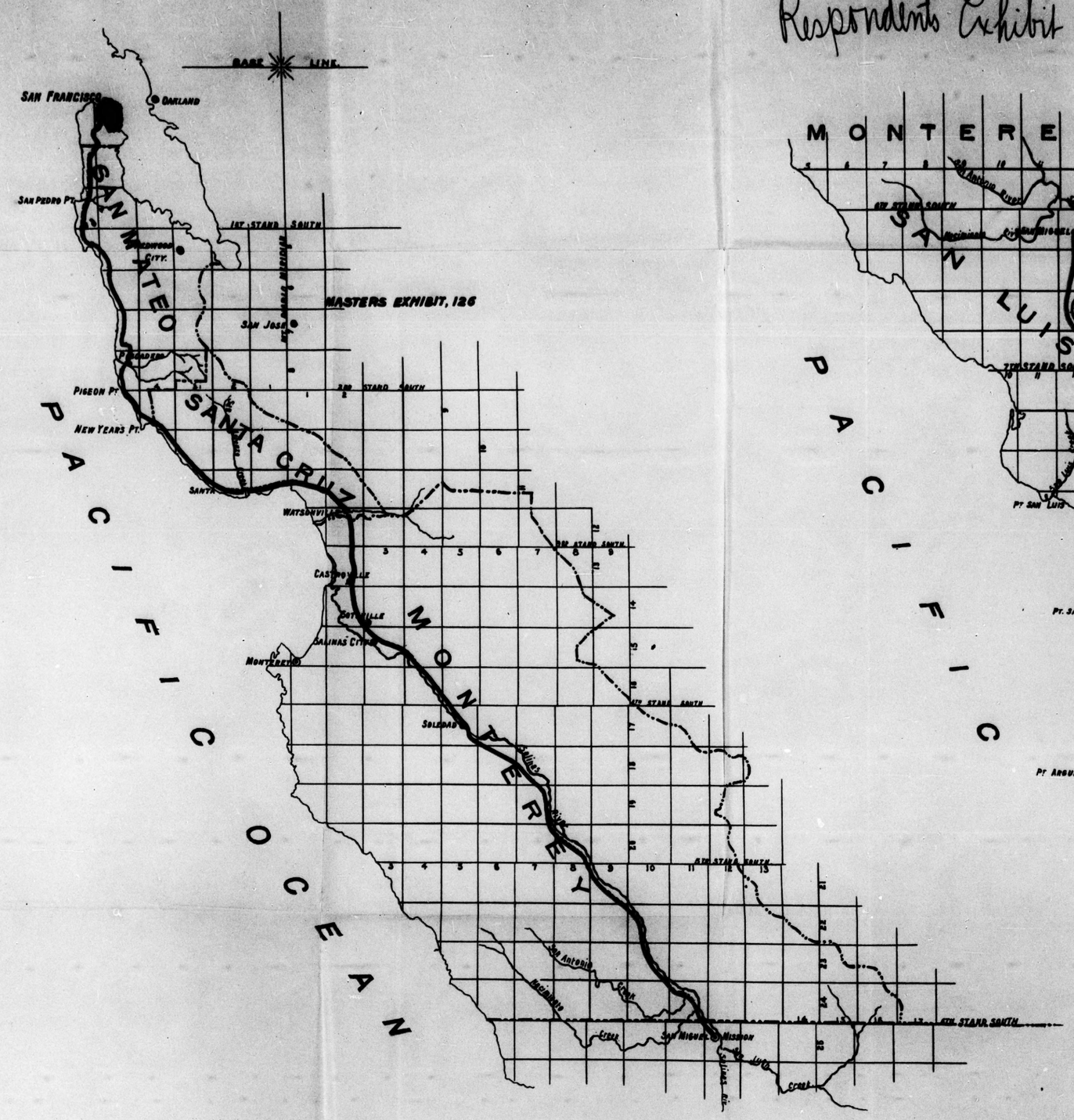
Henry Brown
Justice of the Peace

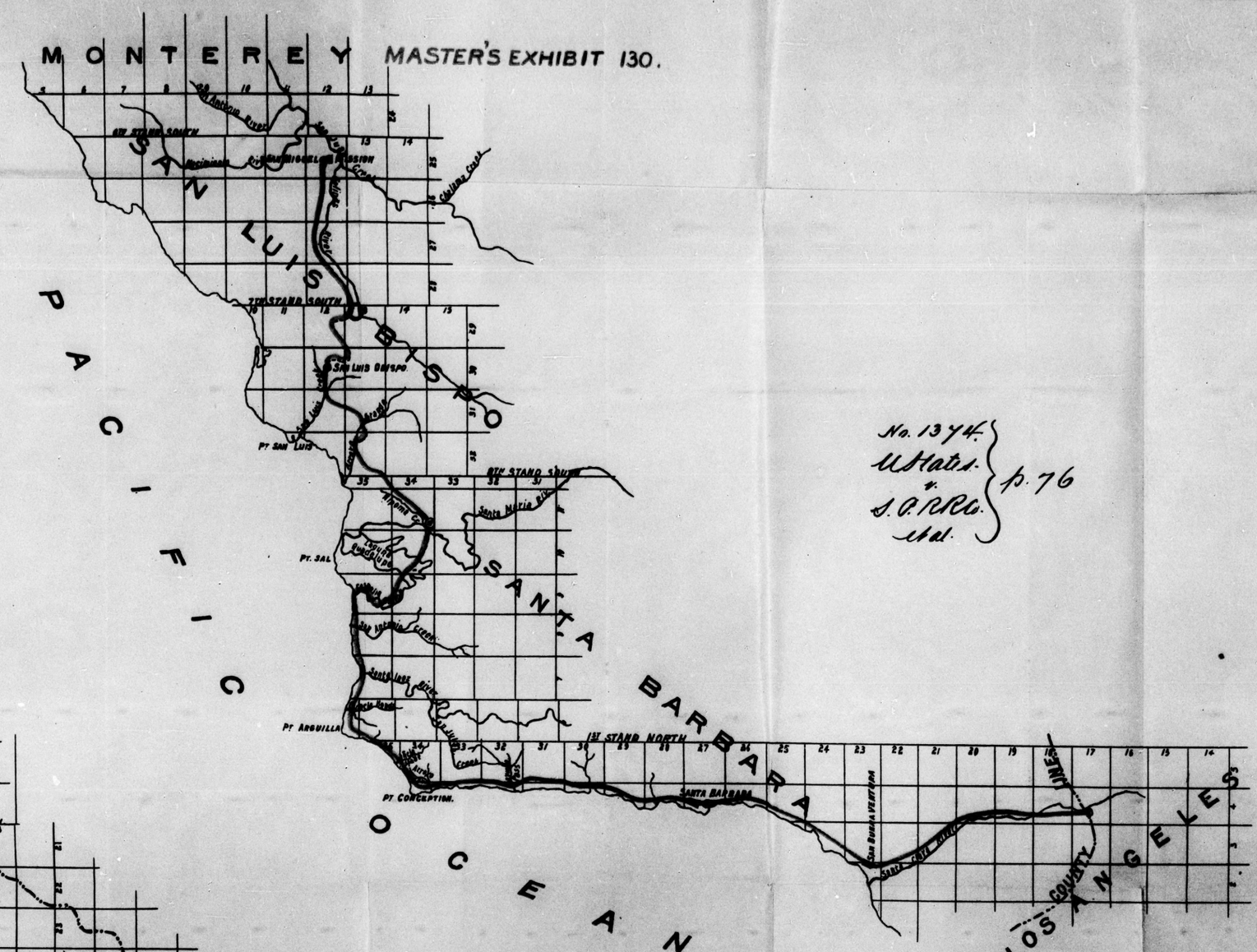
(Endorsed)
Filed June 22. 1837 Wm H. Bradley Clerk


SCALE : 400ft - 1in.
April 1887
No. 587.
p. 24
LAKE MICHIGAN
OUTER HARBOR.
RIVER
Built in 1872 & 73
Built 1881
Built 1880
Breakwater as it was in 1869.
C Built 1867
Dock Line as established by U. S. Engineers.
Ordinance of 1852
Ordinance Sept 15th 1852
Built 1873
Ordinance June 14th 1852
Breakwater as it was in 1869.
ILLINOIS CENTRAL RAIL ROAD.
Central Avenue
Old Shore Line in 1852
Michigan Avenue
Wabash Avenue
South Water Str
Lake Str
Randolph Str
Washington Str
Madison Str
Monroe Str
Adams Str
Jackson Str
Van Buren Str
Congress Str
Harrison Str
Hubbard Ct
Peck Ct
Eldridge Ct
CHICAGO

Respondent's Exhibit 6

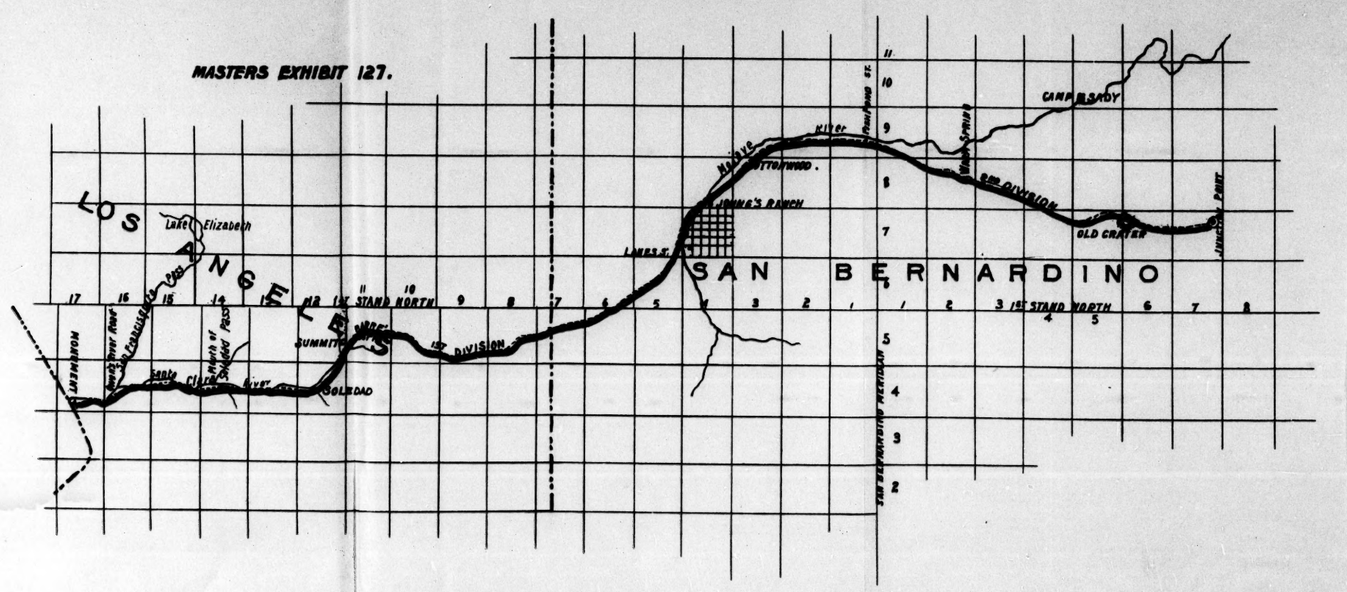
MASTER'S EXHIBIT 130.



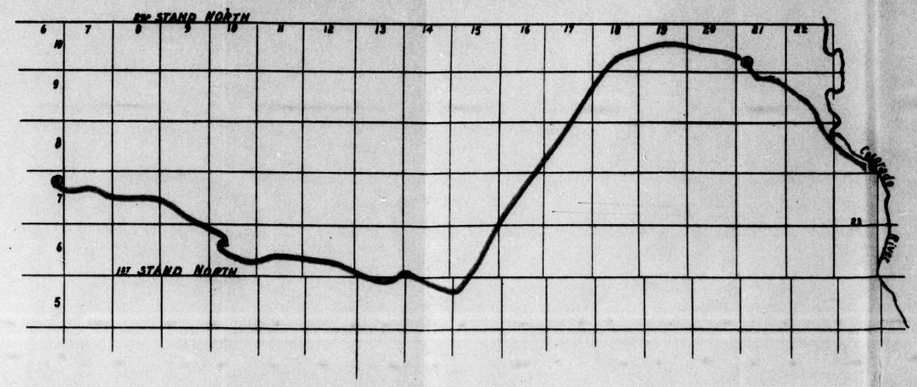


No. 1374.
U. States
v.
S.P.R.R. Co.
Mal.
} p. 76

MASTERS EXHIBIT 127.



MASTER'S EXHIBIT 131.



To Hon. C. Delano Secretary of the Interior.
and Hon Willis Drummond. Commissioner of General Land Office.

Please to take notice that this Map is filed by the Southern Pacific Railroad Company of California in the office of the Commissioner of the General Land Office in the Department of the Interior for the purpose of designating by the heavy red line traced thereon the general line of Railroads as near as may be from a point at or near Tehatchapi Pass, by way of Los Angelos to the Texas Pacific Railroad at or near the Colorado River" adopted by the said Southern Pacific Railroad Company in pursuance of the power and authority granted to said Company by the 23rd section of the Act of the Congress of the United States entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road and for other purposes" approved March 3rd 1871, and in pursuance of the provisions of the Act of July 27th 1866 referred to in said 23rd section and for the purpose of obtaining the benefits of the Provisions of said acts of Congress.

C. P. Huntington
President Southern Pacific Railroad Company.

MAP
OF
PUBLIC SURVEYS
in
CALIFORNIA & NEVADA
to accompany
REPORT of COMMISSIONER
of GENERAL LAND OFFICE
1866.

No. 1374.
U. States
v.
S.P.R.R. Co.
et al.
} p. 345

Filed January 10th 1891
Wm M. Van Dyke
Clerk

U. S. Circuit Court,
Southern Dist. of Cal.
United States of America
vs.
Southern Pacific R.R. Co. et al.
No. 1374
Exhibit 25
Filed January 10 1891
Chas. N. Fox Deputy Clerk
Master and Examiner in Chancery

Department of the Interior
General Land Office
October 2nd 1890
[illegible]
Commissioner

DEL NORTE
1st Stand North.
KLAMATH
2nd Stand North.
TRINITY CO.
3rd Stand North.
HUMBOLDT
SISKIYOU
6th Stand North.
SHASTA
7th Stand North.
LASSEN
Stand North
PLUMAS
5th Stand North
4th Stand North.
SIERRA
3rd Stand North.
PLACER
EL DORADO
2nd Stand North.
ALPINE
TUOLUMNE
MARIPOS
nd South.
nd South.
nd South.
MONO
Humboldt Lake
Desert.
Traverse Line
Mt. Whitney
Middle Fork Feather R.
Farallones Isld
PACIFIC

REFERENCES.

- Seat of Surveyor General's Office.
- Seat of Land Offices.
- Land Grant Rail Roads.
- Light House Reservations.
- Coal Mines.
- Asphaltum Wells.
- Gold Mines.
- Silver
- Quick
- Copper
- Salt Ponds.

List of Private Grants finally surveyed

1 San Buenaventura
2 El Pozo or Cañon or Rio de los Berrenda
3 La Merced, Colorado
4 Los Flores
5 Los Alamos
6 Rio de los Molinos
7 Rancho
8 Tejon
9 Arroyo Chico
10 Fernell's part of J. Williams's
11 " " part of Work or J. Fauer dec'd
12 " " part of Heirs of E.A. Farwell dec'd
13 Antelope
14 Llano Seco
15 Agua Prieta
16 Arguello
17 Larkin's Children
18 Fernandez
19 Bugo
20 Bennet
21 Simons
22 Colus
23 New Helvetia
24 Johnson's Rancho
25 Ivesil
26 Rincon de Musallacon
27 Tuscano
28 Quien sabe
29 Milliken's or Marshall's part of Cook and Ingalls
30 " " part of T. Knight's
31 " " part of San Jacinto Rancho
32 Colonel
33 Gomez
34 Cañada de Capay
35 Cosumnes
36 Rio Jesus Maria
37 Del Paso
38 Juan Jusan
39 Rio de los Americanos
40 Los Putos
41 Rio de los Putos
42 Los Putos
43 Los Millers
44 Cabeciales
45 La Jota
46 Corral Hamamo
47 Molinos
48 Germon
49 Morillo
50 Saratoga
51 Quien sabe Rancho
52 Cañada de Pogollini
53 Blocher
54 Rodear de la Miseria
55 Calaveras
56 Llano de Santa Rosa
57 Cabeza de Santo Rosa

58 Julio Carillas
Meyer and Schmitz's
Juana de Jesus Mallmgh's
John Rentzel's and
James Eldredge
59 Guilcos
60 Garcia
61 Tejonne
62 Chanelle
63 Estenes
64 Sirvens
65 Pastoria
66 Part of Entre Napas Rancho de los Carneros
67 Napa confirm the following confirmed parts
Lyman Bartlett's
Wm H. Ogborne's,
Julius K. Rose's,
Salvador Vallejo's and
Otto H. Frank's
Huichica
Lot in Sonoma
Part of Agua Caliente
Petaluma Rancho
Laguna de San Antonio
Part of Nicasio
Benjamin R. Buckelew
Clement Hewitt
Frank and W. Reynolds

83 Soulajule confirm following confirmed parts
George H. Cornwall's,
Lewis B. Watkins,
Marcus H. Carvalho's,
Pedro J. Mesquez' and
Jackson & Brechtel's,
84 Punta de los Reyes
85 Punta de los Reyes (Sobrante)
86 Tomales y Bolinas (R. Garcia)
87 " " (B. Phelps)
88 Las Baulines
89 Saucelito
90 Cerro Modero del Presidio
91 Punta de Quentin
92 Cañada de Herera
93 San Geronimo
94 San Pedro Santo Margarita y las Gallinas
95 Misn San Rafael (Church property)
96 San Jose
97 Novato
98 Cerro Modero de Novato
99 Olompali
100 Los Ojitos
101 Saquin de los Mosquitumes
102 Arroyo Sosa (A. Pico)
103 Cañada del Rambre
104 El Pitaki
105 San Pablo
106 Northern part of San Antonio
107 Part of San Antonio (A.M. Peralta)
108 " " (Ignacia Peralta)
109 San Leandro
110 San Lorenzo (Barbara Soto)
111 " " (Guillermo Castro)
112 San Ramon (Leo Norris)
113 " " (Jose Maria Amador)
114 Santa Rita (John Bonnet Administrator etc)
115 Valle de San Jose
116 Arroyo de la Alameda
117 Potrero de los Cerritos
118 " " (Ignacio Peralta)
119 Potrero part of San Antonio
120 Acalanes
121 La Sanka de la Cañada de Pinole
122 Los Juntas
123 Cañada del Hambre
124 El Pinole
125 San Pablo
126 Northern part of San Antonio
127 Part of San Antonio (A.M. Peralta)
128 " " (Ignacia Peralta)
129 San Leandro
130 San Lorenzo (Barbara Soto)
131 " " (Guillermo Castro)
132 San Ramon (Leo Norris)
133 " " (Jose Maria Amador)
134 Santa Rita (John Bonnet Administrator etc)
135 Valle de San Jose
136 Arroyo de la Alameda
137 Potrero de los Cerritos
138 Rancho part of San Antonio (Church property)
139 Potrero Calhoun (J. Higuera)
140 San Antonio (J. Higuera)
141 Milpitas
142 Rincon de los Esteros (Ellen E. White)
143 " " " " (Rachel Alviso)
144 " " " " (E. Perryman)
145 Ulantac
146 Part of Pastoria de las Borregas (M. Murphy)
147 Pastoni confirm following confirmed parts
Pachecho's,
Castro's and
Campbell's and
Trigo's.
148 Ranco de San Francisquito Text (T. Robley)
149 Rancho de Arroyo de San Francisquito
150 San Francisquito (Calhoun & Rodriguez)
151 El Corte de Madera
152 Cañada de Raymundo
153 Las Pulgas
154 Palos (Domingo Felix)
155 San Mateo
156 Part. Buri
157 Cañada de Guadalupe, La Visitacion, y Rodeo Viejo
158 Part of Cañada de Guadalupe y Rodeo Viejo
159 Rancho de los Sobrans
160 San Miguel
161 2 Lots at Mtn Pinos (Church property)
162 Same as Subsequent Pine at and at Mtn Pinos
163 Pinos at and at Mtn Pinos (Club Ranch at)
164 2 Lots in San Francisco (2 Lots et al.)
165 Laguna, de la Merced
166 San Pedro (J. Sanchez)
167 Corral de Tierra (Heirs of F. Palomares)
168 " " (Thorn Yuquas)
169 Monte Bello
170 Cañada de Verde y Arroyo de la Purisima
171 Part of San Gregorio (M. C. de Rodriguez)
172 " " (Salvator Cervel)
173 San Antonio or Pescadero
174 Rincon de los Salenia
175 Buriene
176 Nacho Buene

177 Purisima Concepcion
178 Part of San Antonio (Pedro Mesa)
179 " " (W.A. Doran)
180 Quito
181 Rinconada de las Gatos
182 Part of Rancho Santa Cruz Comp (Mary S. Burnett)
183 2 Lots in Santa Clara (Church property)
184 El Potrero de Santa Clara
185 Los Gatos (Antonio Suñol et al.)
186 Pueblo
187 Tarbe Buteno
188 Cañada de Pala
189 San Felipe de los Animas
190 Laguna Seca (J.C. Bull et. al.)
191 Santa Teresa (Augustin Bernal et al)
192 San Juan Bautista (J.A. Warnest)
193 Los Capitancillos (Charles Pezzoli)
194 Los Viejos (Maria J. Bernal Berryess et al)
195 Las Cruz
196 Ojo Agua de la Coche
197 San Francisco de las Plagas
198 La Polka
199 San Isidro (Maria Clara Ortega)
200 San Isidro (Quintin Ortega)
201 Tequisquite
202 Lagunitas Muertas
203 Juristac
204 Las Animas
205 Salia
206 Salsipuedes
207 Bolas del Pajaro
208 San Andreas Rancho Castro et al Rem
209 Las Corralitos
210 Shaquel Augmentation
211 Aptos
212 Shaquel
213 Arroyo del Rodeo
214 Mun Rancho of Santa Cruz (Church property)
215 Tres Ojitos de Agua (now Santa Cruz)
216 Refugio
217 Los Carbonero
218 San Augustin
219 Zayante
220 El Pescadero (H. Gramer)
221 El Puerto
222 Orestimba
223 Los Marigentes
224 Saugon de Santa Rita (Francisco Soberanes)
225 San Luis Gonzago
226 Asuncyenes and Santa Felipe
227 Santa Ana y Quien Sabe
228 Tlanaga de los Palantes
229 San Justo
230 Pasto in Mun San Juan Bautista (Church property)
231 Part of land now San Juan (Patrick Breen)
232 Los Aromitas y Agua Caliente
233 Vega del Rio del Pajaro
234 Bolas de San Cayetano
235 Las Carneros (B. Lattigino)
236 Cañada de la Carpinteria
237 San Carneros (F.A. M. Bonguil et al.)
238 Las Vergoles
239 Bolas Nuevo y Moro Cojo
240 Bolas de Potrero y Moro Cojo (Antonio Rodriguez heirs)
241 Bolas de Escorpiones
242 La Natividad
243 Sausal
244 Las Gatos or Santa Rita
245 Rincon de Sanjon
246 Punta of land in Monterey County (Estate of)
247 Huichuci
248 Llana de Buena Vista
249 El Alisal
250 Alisal
251 Encinal, y Buena Esperanza
252 Chualar
253 Zanjones
254 Rincon de la Punta del Monte
255 San Vicente
256 Los Gatos (Maria Soberanes)
257 El Mission Soledad
258 2 Tracts of Mun Soledad (Church property)
259 Pinnje de Sanchez
260 Guadalupe
261 Buena Vista (M. Molarin Ant)
262 El Toro
263 City limits of Monterey containing the following surveyed Ranches within the boundaries
264 Rincon de los Salenia
265 Nacho Buene

266 Point Pinos
267 Saucito and part of
268 Laguna Seca (C. de Munras)
269 El Potrero (J.C. Ord)
270 Carmelo Mission (Church property)
271 Cañada de la Segunda
272 Tract of land (J. Meadows)
273 El Potrero de San Carlos
274 San Francisquito (Jose Abrego et al.)
275 Los Laderillos
276 Los Tularcitos (Heirs of R. Gomez)
277 El Sur
278 Arroyo Seco (J. de la Torre)
279 Pico de los Gatos
280 San Lorenzo (F. Soberanes)
281 " " (R. Sanchez)
282 Point Pinos
283 Saucito and part of
284 Laguna Seca (C. de Munras)
285 El Potrero (J.C. Ord)
286 Carmelo Mission (Church property)
287 Cañada de la Segunda
288 Tract of land (J. Meadows)
289 El Potrero de San Carlos
290 San Francisquito (Jose Abrego et al.)
291 Los Laderillos
292 Los Tularcitos (Heirs of R. Gomez)
293 El Sur
294 Arroyo Seco (J. de la Torre)
295 Pico de los Gatos
296 San Lorenzo (F. Soberanes)
297 " " (R. Sanchez)
298 Point Pinos
299 Saucito and part of
300 Laguna Seca (C. de Munras)
301 El Potrero (J.C. Ord)
302 Carmelo Mission (Church property)
303 Cañada de la Segunda
304 Tract of land (J. Meadows)
305 El Potrero de San Carlos
306 San Francisquito (Jose Abrego et al.)
307 Los Laderillos
308 Los Tularcitos (Heirs of R. Gomez)
309 El Sur
310 Arroyo Seco (J. de la Torre)
311 Pico de los Gatos
312 San Lorenzo (F. Soberanes)
313 " " (R. Sanchez)

314 Santa Paula y Saticoy
315 Santa Clara del Norte
316 Los Penas
317 Collegnas
318 Guadalupe
319 El Conejo
320 Sitio
321 San Francisco (Feliz et al.)
322 Ex Mission San Fernando
323 Mis San Fernando (Ingerll property)
324 Pilyungu
325 La Cañada
326 San Pascual
327 Santa Anita
328 Azusa (J. Duarte)
329 Azusa (B. Dalton)
330 San Jose and Addition (Other Square Leagues)
331
332 Addition to Santa Ana del Chino
333 Santa Ana del Chino
334 Rincon de la Prei
335 Los Negoles
336 La Puente
337 Part of land (Assns. Pabb. de Jesus Cantberg
338 Puerto de Cuddy
339 Prieto adjoin Gabriel Mun (Church property)
340 Potrero de Felipe Lugo
341 Potrero Grande
342 La Merced
343 San Jacintos (J. M. Lugo)
344 Pueblo lands of the City of Los Angeles
345 La Cienaga
346 San Jose de Buenos Ayres
347 La Ballona
348 Los Palos Verdes
349 San Pedro (M. Dominguez et al)
350 Tajuata
351 La Bolsa
352 Las Coyotes
353 Los Alamitos
354 La Bolsa Chico
355 Las Bolsas
356 Santiago de Santa Ana
357 Colon de Santa Ana
358 El Rincon
359 San Bernardino
360 San Joaquin
361 Cañada de los Alisos
362 Trabuco
363 Mission Viejo, of La Paz
364 Agua Tierra y las Tramas
365 Alipaitos (Puente)
366 El Sobrante de San Jacinto
367 San Vicente (Escrito)
368 El Rancho San Jacinto Reservation.
369 Pueblo.

Indian Reservations
A Nome Lackee.
B Nome Cult.
D Smith River.

Explanation
Surveys executed and returned to this Office
Townships subdivided into Sections and returns made to this Office

Scale 18 Miles to an inch.

Surveyor General's Office.
San Francisco California, June 30th 1863

L. Upson
U.S. Surv. Gen. Cal

6

Santa Barbara Channel

San Pedro Channel

Santa Cruz Island

Santa Rosa Island

Santa Catalina Island

Coso Mts

Panamint Mts

Owens Lake

Tulare Lake

Goose Lake

Mono Lake

Walker Lake

Owens River

Mohave R.

Potosi District

State Range Dist.

Saline Valley

Grapevine Canon

Tejon Canon

Kern Lake

Buena Vista Lake

Kern River

Tulare Valley

Fresno Valley

San Joaquin Valley

Sacramento Valley

Coast Range

Sierra Nevada

Mount Whitney

Mount Shasta

Mount Diablo

Mount Hamilton

Mount Pinos

Mount San Bernardino

Mount San Jacinto

Mount San Antonio

Mount Tamalpais

Mount Helena

Mount Konocti

Mount Lassen

Mount Dana

Mount Tyndall

Mount Williamson

Mount Langley

Mount Agassiz

Mount Darwin

Mount Gibbs

Mount Brewer

Mount Goddard

Mount Abbot

Mount Dade

Mount Humphreys

Mount Tom

Mount Morgan

Mount Gardner

Mount Warren

Mount Hoffman

Mount Conness

Mount Dunderberg

Mount Patterson

Mount Grant

Mount Lyell

Mount Ritter

Mount Banner

Mount Silliman

Mount Whitney

Mount Tyndall

Mount Williamson

Mount Langley

Mount Agassiz

Mount Darwin

Mount Gibbs

Mount Brewer

Mount Goddard

Mount Abbot

Mount Dade

Mount Humphreys

Mount Tom

Mount Morgan

Mount Gardner

Mount Warren

Mount Hoffman

Mount Conness

Mount Dunderberg

Mount Patterson

Mount Grant

Mount Lyell

Mount Ritter

Mount Banner

Mount Silliman

No. 1374
U. States
vs.
S.P.R.R.
et al.

p. 347

Filed January 10th - 1891
Mm. M. Sandyk
Clerk

PLAT

SHOWING THE LOCATION OF THE ROUTE
OF THE

SOUTHERN PACIFIC RAILROAD
(OF CALIFORNIA.)

Under an Act granting Lands to aid in the construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast, by the Southern Route.
Approved –

Scale, Eighteen Miles to One Inch.

U. S. Circuit Court,
Southern Dist. of Cal.
United States of America
vs.
Southern Pacific Railroad Co
Master's Exhibit (37)
Filed January 5th 1891
Chas. A. Batchelder
Master and Examiner in Chancery

Office Southern Pacific Railroad Company.
San Francisco California

We hereby certify that this Map indicates the line of the Preliminary Survey of the Southern Pacific Railroad, and as such was adopted and approved by the Board of Directors of the Southern Pacific Railroad Company, at a meeting held at the Office, in the City of San Francisco, on the 22nd day of September A.D. 1866.

In witness whereof we have hereunto set our hands and seals this 29th day of September A.D. 1866.

T. H. Phelps, President Southern Pacific Railroad Co.
Chas. N. Fox, Secretary pro tem Southern Pacific Railroad Co.
Wm. H. Lewis, Chief Engineer Southern Pacific R.R.

See letter to Stockton Office of Sept 25th 1868 relative to even sections within the 20 & 30 Miles Limits

Explanations.

Route of the Southern Pacific Railroad.
Line of 20 miles, limit for 10 Alternate Sections.
Line of 10 miles additional, for selections in lieu of Grant.
Line of 20 miles additional, for selections in lieu of Mineral.
Line of 5 miles addition, for possible Change of location.

1st Stand North
2nd Stand North
3rd Stand North
4th Stand North
5th Stand North
6th Stand North
7th Stand North
1st Stand South
2nd Stand South
3rd Stand South
4th Stand South
5th Stand South
6th Stand North
7th Stan
Base Line
Mount Diablo
Humboldt Lake
Pyramid Lake
Honey Lake
Walker River
Carson River
Truckee River
Sacramento
Shasta
Redding
Red Bluff
Tehama
Colusa
Marysville
Oroville
Chico
Knights Landing
Woodland
Davisville
Vacaville
Suisun
Benicia
Martinez
Antioch
Pittsburg
Port Costa
Oakland
Alameda
San Leandro
Haywards
Niles
San Jose
Gilroy
Hollister
Salinas City
Soledad
Chualar
Monterey
Castroville
Watsonville
Santa Cruz
Pescadero
Redwood City
San Mateo
Belmont
San Francisco
Lathrop
Stockton
Lodi
Galt
Elk Grove
Folsom
Placerville
Auburn
Colfax
Dutch Flat
Donner Lake
Truckee
Reno
Wadsworth
Humboldt Mts
Humboldt R.
Mountain City
Osino
Battle Mt.
Argenta
Austin
Reese R.
Edwards Creek
Fallon
Carson City
Virginia City
Gold Hill
Silver City
Dayton
Wabuska
Hawthorne
Walker Lake
Mason
Yerington
Genoa
Monte Cristo
Pilot Peak
Toano
Ruby Valley
Huntington
Diamond
Eureka
Hamilton
Ely
Duckwater
Egan Range
Schell Creek Range
Antelope Valley
Desert
Mojave
Tehachapi Mts
Tejon
Fort Tejon
Bakersfield
Kern
Buena Vista Lake
Tulare Lake
Kings River
Fresno
Madera
Merced
Modesto
Tuolumne
Sonora
Copperopolis
Milton
Angels
Murphys
Jackson
Ione
Sutter Creek
Amador City
Volcano
Plymouth
Placerville
Coloma
Folsom

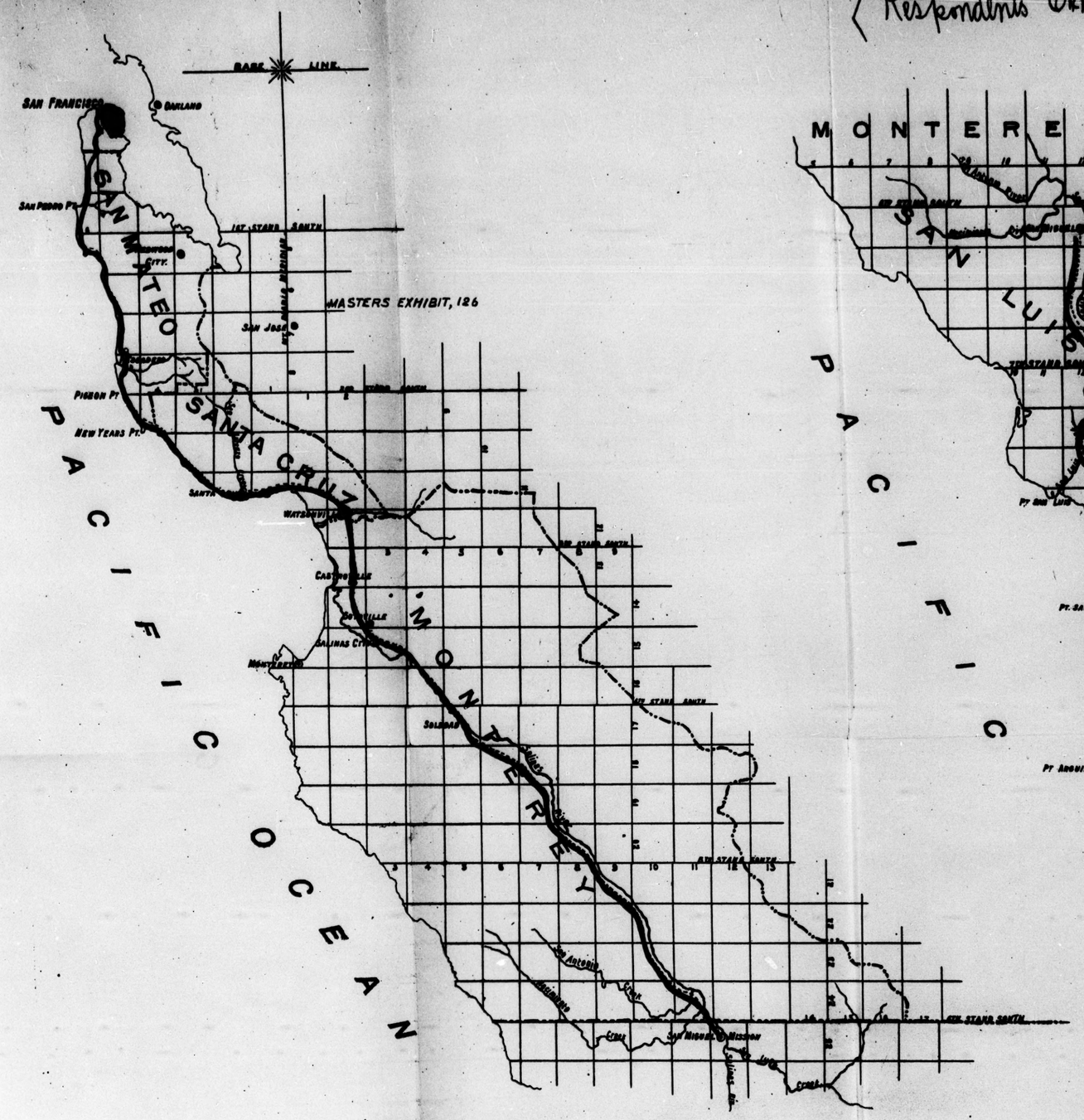
Line of 5 miles addition, for Pueblo

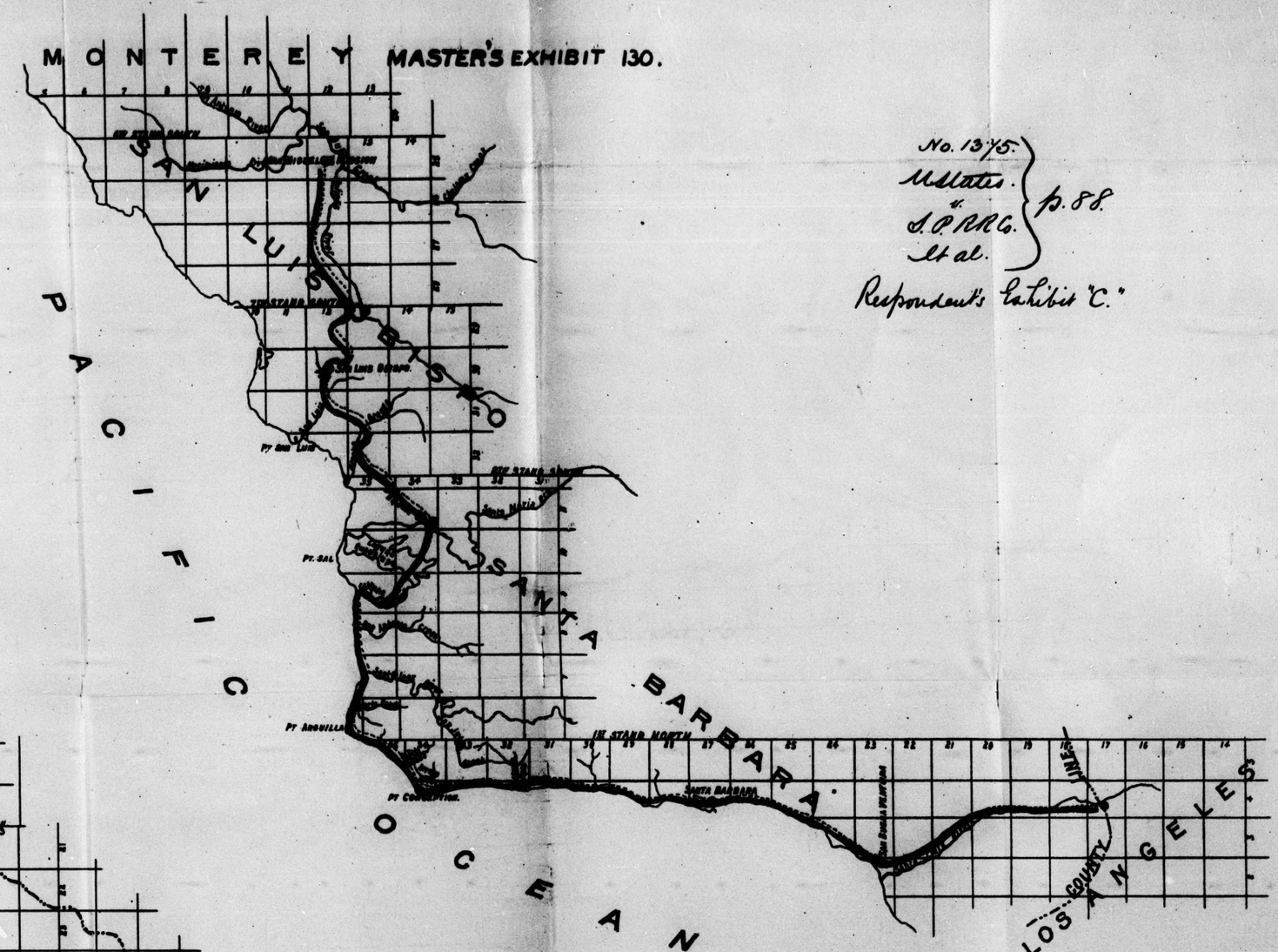
List of Private Grants finally surveyed.

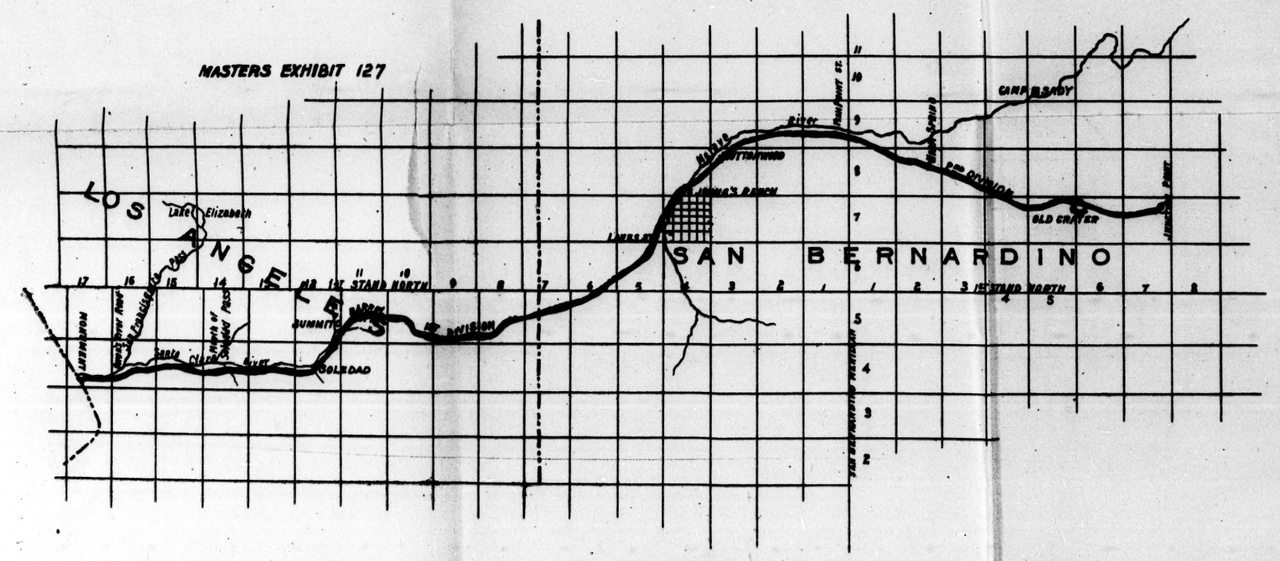
1	San Buenaventura	83	San Miguel or Rancho Las Tablas (Pueblo lands)	294	Portezuelo, Gonzales	344	Potrero Nuevo
2	Mission Church and Pueblo lands Buenaventura		George W. Cornwall's	161	Potrero Las Animas (Pueblo Monterey)	167	Sausalito and part of
3	San Buenaventura Colonia		Lucas & Hartnell's		" " (W.A. Dana)	116	Laguna Seca (Col. Wm. Hartnell)
4	Las Flores		Martin Y. Cornwall's	189	Quien	188	Ex Mission Soledad (Church property)
5	Las Cienegas		Pedro C. Nuñez's and	170	Encinal de las Gatos	168	Ex Pueblo de la Purisima
6	Rancho de los Molinos		Antonio J. Bandini's	171	Island of Santa Cruz (Church property)	142	Head of Island (Mr. Vallejo)
7	San Joaquin	84	Punta de los Reyes	175	Islets in Santa Cruz Channel (Church property)	143	El Potrero de San Carlos
8	Orange	85	Punta de los Reyes (Subdivision)	173	El Potrero de Santa Clara	144	San Francisquito (San Joaquin et al)
9	Arroyo Chico	86	Potrero y Rancho de J. Quevedo	174	La Laguna (Antonio Buelna et al)	146	San Jose Island
10	Tarumah (part of) Williams	87	" " (R.D. Hunter)	176	Pala	144	Las Pulgas (Mexican Grant)
11	" (another Share of) Water shed	88	Las Virgenes	177	Yerba Buena	148	El Sur
12	" " (part of) Rancho of D.A. Bernal et al	89	Ensenada	178	Cañada de Pinole	149	Las Positas (Mexican Grant)
13	Alameda	90	Corte Madera del Presidio	179	San Pablo (Antonio Pacheco et al)	150	Santa Teresa (Hypolito Bernal et al)
14	Llano Seco	91	Cañada de Raymundo	180	San Juan Bautista (El Alisal Grant)	151	" " (R. Sanchez)
15	Agua de Perez	92	San Geronimo	181	San Antonio (Antonio Pacheco et al)	152	San Antonio (Mexican Grant)
16	Tejunga	93	San Pedro, Santa Margarita y las Gallinas	182	San Leandro (Estate of)	153	Rincon de la Brea
17	Agricultural Children	94	Rancho San Rafael (Church property)	183	San Miguel, Isla de Alcatraz, Los Morros et al	154	San Lorenzo
18	Tejunga del Rio	95	San José	184	San Lorenzo	155	Rancho Pinole
19	Azusa	96	Novato	185	Ojo de Agua de la Coche	156	San Leandro
20	Rincon	97	Corte Madera de Novato	186	San Francisco de los Playas	157	San Bernardino (Church property)
21	Nogales	98	Olompali	187	La Peña	158	San Miguelito
22	Cahuenga	99	Las Ulpinas	188	San Vicente (Cerro de Guipe)	159	Rancho Pinole (Part of)
23	New Helvetia	100	Sanjon de los Huembemos	189	San Pablo (Pueblo de Ortega)	160	Rancho Pinole (Part of)
24	Johnson's Rancho	101	Arroyo Seco (A. Pico)	190	Tequescquite	161	Cerro de Pinole
25	Natoma	102	Rancho del Rio Estanislao	191	Encinal de Temescal	162	Encinal de Temescal (Contributory)
26	Rincon de Musa Locos	103	Compas de los Franciscos	192	Arroyo de la Alameda	163	Rancho Pinole (Part of)
27	Pleasant	104	Monserate	193	Solis	164	Rancho Pinole (Part of)
28	Solayome	105	Rancho del Diablo	194	Solis	165	Rancho Pinole (Part of)
29	Rancho Nuevo (Part of) and adjoining		(part of "Temple)	195	Arroyo de los Nuños y los Huevos	166	Rancho Pinole (Part of)
30	" " (part of) "		(part of the Buchanan grant)	196	Las Juntas (Pueblo lands)	167	Rancho Pinole (Part of)
31	" " (part of) "		(part of the Buchanan grant)	197	La Laguna de las Pulgas Colorados	168	Rancho Pinole (Part of)
32	" " (part of) "		(part of the Buchanan grant)	198	Las Juntas	169	Rancho Pinole (Part of)
33	Cahuenga I	106	San Leandro	199	Arroyo de la Alameda	170	Rancho Pinole (Part of)
34	Cahuenga II	107	San Lorenzo y el Rancho de Castro	200	Arroyo de la Alameda	171	Rancho Pinole (Part of)
35	Cahuenga III	108	Rancho del Pinole	201	Arroyo de la Alameda	172	Rancho Pinole (Part of)
36	Cahuenga IV	109	Rancho del Pinole	202	Arroyo de la Alameda	173	Rancho Pinole (Part of)
37	Cahuenga V	110	Rancho del Pinole	203	Arroyo de la Alameda	174	Rancho Pinole (Part of)
38	Cahuenga VI	111	Rancho del Pinole	204	Arroyo de la Alameda	175	Rancho Pinole (Part of)
39	Cahuenga VII	112	Rancho del Pinole	205	Arroyo de la Alameda	176	Rancho Pinole (Part of)
40	Cahuenga VIII	113	Rancho del Pinole	206	Arroyo de la Alameda	177	Rancho Pinole (Part of)
41	Cahuenga IX	114	Rancho del Pinole	207	Arroyo de la Alameda	178	Rancho Pinole (Part of)
42	Cahuenga X	115	Rancho del Pinole	208	Arroyo de la Alameda	179	Rancho Pinole (Part of)
43	Cahuenga XI	116	Rancho del Pinole	209	Arroyo de la Alameda	180	Rancho Pinole (Part of)
44	Cahuenga XII	117	Rancho del Pinole	210	Arroyo de la Alameda	181	Rancho Pinole (Part of)
45	Cahuenga XIII	118	Rancho del Pinole	211	Arroyo de la Alameda	182	Rancho Pinole (Part of)
46	Cahuenga XIV	119	Rancho del Pinole	212	Arroyo de la Alameda	183	Rancho Pinole (Part of)
47	Cahuenga XV	120	Rancho del Pinole	213	Arroyo de la Alameda	184	Rancho Pinole (Part of)
48	Cahuenga XVI	121	Rancho del Pinole	214	Arroyo de la Alameda	185	Rancho Pinole (Part of)
49	Cahuenga XVII	122	Rancho del Pinole	215	Arroyo de la Alameda	186	Rancho Pinole (Part of)
50	Cahuenga XVIII	123	Rancho del Pinole	216	Arroyo de la Alameda	187	Rancho Pinole (Part of)
51	Cahuenga XIX	124	Rancho del Pinole	217	Arroyo de la Alameda	188	Rancho Pinole (Part of)
52	Cahuenga XX	125	Rancho del Pinole	218	Arroyo de la Alameda	189	Rancho Pinole (Part of)
53	Cahuenga XXI	126	Rancho del Pinole	219	Arroyo de la Alameda	190	Rancho Pinole (Part of)
54	Cahuenga XXII	127	Rancho del Pinole	220	Arroyo de la Alameda	191	Rancho Pinole (Part of)
55	Cahuenga XXIII	128	Rancho del Pinole	221	Arroyo de la Alameda	192	Rancho Pinole (Part of)
56	Cahuenga XXIV	129	Rancho del Pinole	222	Arroyo de la Alameda	193	Rancho Pinole (Part of)
57	Cahuenga XXV	130	Rancho del Pinole	223	Arroyo de la Alameda	194	Rancho Pinole (Part of)
58	Cahuenga XXVI	131	Rancho del Pinole	224	Arroyo de la Alameda	195	Rancho Pinole (Part of)
59	Cahuenga XXVII	132	Rancho del Pinole	225	Arroyo de la Alameda	196	Rancho Pinole (Part of)
60	Cahuenga XXVIII	133	Rancho del Pinole	226	Arroyo de la Alameda	197	Rancho Pinole (Part of)
61	Cahuenga XXIX	134	Rancho del Pinole	227	Arroyo de la Alameda	198	Rancho Pinole (Part of)
62	Cahuenga XXX	135	Rancho del Pinole	228	Arroyo de la Alameda	199	Rancho Pinole (Part of)
63	Cahuenga XXXI	136	Rancho del Pinole	229	Arroyo de la Alameda	200	Rancho Pinole (Part of)
64	Cahuenga XXXII	137	Rancho del Pinole	230	Arroyo de la Alameda	201	Rancho Pinole (Part of)
65	Cahuenga XXXIII	138	Rancho del Pinole	231	Arroyo de la Alameda	202	Rancho Pinole (Part of)
66	Cahuenga XXXIV	139	Rancho del Pinole	232	Arroyo de la Alameda	203	Rancho Pinole (Part of)
67	Cahuenga XXXV	140	Rancho del Pinole	233	Arroyo de la Alameda	204	Rancho Pinole (Part of)
68	Cahuenga XXXVI	141	Rancho del Pinole	234	Arroyo de la Alameda	205	Rancho Pinole (Part of)
69	Cahuenga XXXVII	142	Rancho del Pinole	235	Arroyo de la Alameda	206	Rancho Pinole (Part of)
70	Cahuenga XXXVIII	143	Rancho del Pinole	236	Arroyo de la Alameda	207	Rancho Pinole (Part of)
71	Cahuenga XXXIX	144	Rancho del Pinole	237	Arroyo de la Alameda	208	Rancho Pinole (Part of)
72	Cahuenga XL	145	Rancho del Pinole	238	Arroyo de la Alameda	209	Rancho Pinole (Part of)
73	Cahuenga XLI	146	Rancho del Pinole	239	Arroyo de la Alameda	210	Rancho Pinole (Part of)
74	Cahuenga XLII	147	Rancho del Pinole	240	Arroyo de la Alameda	211	Rancho Pinole (Part of)
75	Cahuenga XLIII	148	Rancho del Pinole	241	Arroyo de la Alameda	212	Rancho Pinole (Part of)
76	Cahuenga XLIV	149	Rancho del Pinole	242	Arroyo de la Alameda	213	Rancho Pinole (Part of)
77	Cahuenga XLV	150	Rancho del Pinole	243	Arroyo de la Alameda	214	Rancho Pinole (Part of)
78	Cahuenga XLVI	151	Rancho del Pinole	244	Arroyo de la Alameda	215	Rancho Pinole (Part of)
79	Cahuenga XLVII	152	Rancho del Pinole	245	Arroyo de la Alameda	216	Rancho Pinole (Part of)
80	Cahuenga XLVIII	153	Rancho del Pinole	246	Arroyo de la Alameda	217	Rancho Pinole (Part of)
81	Cahuenga XLIX	154	Rancho del Pinole	247	Arroyo de la Alameda	218	Rancho Pinole (Part of)
82	Cahuenga L	155	Rancho del Pinole	248	Arroyo de la Alameda	219	Rancho Pinole (Part of)
83	Cahuenga LI	156	Rancho del Pinole	249	Arroyo de la Alameda	220	Rancho Pinole (Part of)
84	Cahuenga LII	157	Rancho del Pinole	250	Arroyo de la Alameda	221	Rancho Pinole (Part of)
85	Cahuenga LIII	158	Rancho del Pinole	251	Arroyo de la Alameda	222	Rancho Pinole (Part of)
86	Cahuenga LIV	159	Rancho del Pinole	252	Arroyo de la Alameda	223	Rancho Pinole (Part of)
87	Cahuenga LV	160	Rancho del Pinole	253	Arroyo de la Alameda	224	Rancho Pinole (Part of)
88	Cahuenga LVI	161	Rancho del Pinole	254	Arroyo de la Alameda	225	Rancho Pinole (Part of)
89	Cahuenga LVII	162	Rancho del Pinole	255	Arroyo de la Alameda	226	Rancho Pinole (Part of)
90	Cahuenga LVIII	163	Rancho del Pinole	256	Arroyo de la Alameda	227	Rancho Pinole (Part of)
91	Cahuenga LIX	164	Rancho del Pinole	257	Arroyo de la Alameda	228	Rancho Pinole (Part of)
92	Cahuenga LX	165	Rancho del Pinole	258	Arroyo de la Alameda	229	Rancho Pinole (Part of)
93	Cahuenga LXI	166	Rancho del Pinole	259	Arroyo de la Alameda	230	Rancho Pinole (Part of)
94	Cahuenga LXII	167	Rancho del Pinole	260	Arroyo de la Alameda	231	Rancho Pinole (Part of)
95	Cahuenga LXIII	168	Rancho del Pinole	261	Arroyo de la Alameda	232	Rancho Pinole (Part of)
96	Cahuenga LXIV	169	Rancho del Pinole	262	Arroyo de la Alameda	233	Rancho Pinole (Part of)
97	Cahuenga LXV	170	Rancho del Pinole	263	Arroyo de la Alameda	234	Rancho Pinole (Part of)
98	Cahuenga LXVI	171	Rancho del Pinole	264	Arroyo de la Alameda	235	Rancho Pinole (Part of)
99	Cahuenga LXVII	172	Rancho del Pinole	265	Arroyo de la Alameda	236	Rancho Pinole (Part of)
100	Cahuenga LXVIII	173	Rancho del Pinole	266	Arroyo de la Alameda	237	Rancho Pinole (Part of)
101	Cahuenga LXIX	174	Rancho del Pinole	267	Arroyo de la Alameda	238	Rancho Pinole (Part of)
102	Cahuenga LXX	175	Rancho del Pinole	268	Arroyo de la Alameda	239	Rancho Pinole (Part of)
103	Cahuenga LXXI	176	Rancho del Pinole	269	Arroyo de la Alameda	240	Rancho Pinole (Part of)
104	Cahuenga LXXII	177	Rancho del Pinole	270	Arroyo de la Alameda	241	Rancho Pinole (Part of)
105	Cahuenga LXXIII	178	Rancho del Pinole	271	Arroyo de la Alameda	242	Rancho Pinole (Part of)
106	Cahuenga LXXIV	179	Rancho del Pinole	272	Arroyo de la Alameda	243	Rancho Pinole (Part of)
107	Cahuenga LXXV	180	Rancho del Pinole	273	Arroyo de la Alameda	244	Rancho Pinole (Part of)
108	Cahuenga LXXVI	181	Rancho del Pinole	274	Arroyo de la Alameda	245	Rancho Pinole (Part of)
109	Cahuenga LXXVII	182	Rancho del Pinole	275	Arroyo de la Alameda	246	Rancho Pinole (Part of)
110	Cahuenga LXXVIII	183	Rancho del Pinole	276	Arroyo de la Alameda	247	Rancho Pinole (Part of)
111	Cahuenga LXXIX	184	Rancho del Pinole	277	Arroyo de la Alameda	248	Rancho Pinole (Part of)
112	Cahuenga LXXX	185	Rancho del Pinole	278	Arroyo de la Alameda	249	Rancho Pinole (Part of)
113	Cahuenga LXXXI	186	Rancho del Pinole	279	Arroyo de la Alameda	250	Rancho Pinole (Part of)
114	Cahuenga LXXXII	187	Rancho del Pinole	280	Arroyo de la Alameda	251	Rancho Pinole (Part of)
115	Cahuenga LXXXIII	188	Rancho del Pinole	281	Arroyo de la Alameda	252	Rancho Pinole (Part of)
116	Cahuenga LXXXIV	189	Rancho del Pinole	282	Arroyo de la Alameda	253	Rancho Pinole (Part of)
117	Cahuenga LXXXV	190	Rancho del Pinole	283	Arroyo de la Alameda	254	Rancho Pinole (Part of)
118	Cahuenga LXXXVI	191	Rancho del Pinole	284	Arroyo de la Alameda	255	Rancho Pinole (Part of)
119	Cahuenga LXXXVII	192	Rancho del Pinole	285	Arroyo de la Alameda	256	Rancho Pinole (Part of)
120	Cahuenga LXXXVIII	193	Rancho del Pinole	286	Arroyo de la Alameda	257	Rancho Pinole (Part of)
121	Cahuenga LXXXIX	194	Rancho del Pinole	287	Arroyo de la Alameda	258	Rancho Pinole (Part of)
122	Cahuenga XC	195	Rancho del Pinole	288	Arroyo de la Alameda	259	Rancho Pinole (Part of)
123	Cahuenga XCI	196	Rancho del Pinole	289	Arroyo de la Alameda	260	Rancho Pinole (Part of)
124	Cahuenga XCII	197	Rancho del Pinole	290	Arroyo de la Alameda	261	Rancho Pinole (Part of)
125	Cahuenga XCIII	198	Rancho del Pinole	291	Arroyo de la Alameda	262	Rancho Pinole (Part of)
126	Cahuenga XCIV	199	Rancho del Pinole	292	Arroyo de la Alameda	263	Rancho Pinole (Part of)
127	Cahuenga XCV	200	Rancho del Pinole	293	Arroyo de la Alameda	264	Rancho Pinole (Part of)
128	Cahuenga XCVI	201	Rancho del Pinole	294	Arroyo de la Alameda	265	Rancho Pinole (Part of)
129	Cahuenga XCVII	202	Rancho del Pinole	295	Arroyo de la Alameda	266	Rancho Pinole (Part of)
130	Cahuenga XCVIII	203	Rancho del Pinole	296	Arroyo de la Alameda	267	Rancho Pinole (Part of)
131	Cahuenga XCIX	204	Rancho del Pinole	297	Arroyo de la Alameda	268	Rancho Pinole (Part of)
132	Cahuenga C	205	Rancho del Pinole	298	Arroyo de la Alameda	269	Rancho Pinole (Part of)
133	Cahuenga CI	206	Rancho del Pinole	299	Arroyo de la Alameda	270	Rancho Pinole (Part of)
134	Cahuenga CII	207	Rancho del Pinole	300	Arroyo de la Alameda	271	Rancho Pinole (Part of)
135	Cahuenga CIII	208	Rancho del Pinole	301	Arroyo de la Alameda	272	Rancho Pinole (Part of)
136	Cahuenga CIV	209	Rancho del Pinole	302	Arroyo de la Alameda	273	Rancho Pinole (Part of)
137	Cahuenga CV	210	Rancho del Pinole	303	Arroyo de la Alameda	274	Rancho Pinole (Part of)
138	Cahuenga CVI	211	Rancho del Pinole	304	Arroyo de la Alameda	275	Rancho Pinole (Part of)
139	Cahuenga CVII	212	Rancho del Pinole	305	Arroyo de la Alameda	276	Rancho Pinole (Part of)
140	Cahuenga CVIII	213	Rancho del Pinole	306	Arroyo de la Alameda	277	Rancho Pinole (Part of)
141	Cahuenga CIX	214	Rancho del Pinole	307	Arroyo de la Alameda	278	Rancho Pinole (Part of)
142	Cahuenga CX	215	Rancho del Pinole	308	Arroyo de la Alameda	279	Rancho Pinole (Part of)
143	Cahuenga CXI	216	Rancho del Pinole	309	Arroyo de la Alameda	280	Rancho Pinole (Part of)
144	Cahuenga CXII	217	Rancho del Pinole	310	Arroyo de la Alameda	281	Rancho Pinole (Part of)
145	Cahuenga CXIII	218	Rancho del Pinole	311	Arroyo de la Alameda	282	Rancho Pinole (Part of)
146	Cahuenga CXIV	219	Rancho del Pinole	312	Arroyo de la Alameda	283	Rancho Pinole (Part of)
147	Cahuenga CXV	220	Rancho del Pinole	313	Arroyo de la Alameda	284	Rancho Pinole (Part of)
148	Cahuenga CXVI	221	Rancho del Pinole	314	Arroyo de la Alameda	285	Rancho Pinole (Part of)
149	Cahuenga CXVII	222	Rancho del Pinole	315	Arroyo de la Alameda	286	Rancho Pinole (Part of)
150	Cahuenga CXVIII	223	Rancho del Pinole	316	Arroyo de la Alameda	287	Rancho Pinole (Part of)
151	Cahuenga CXIX	224	Rancho del Pinole	317	Arroyo de la Alameda	288	Rancho Pinole (Part of)
152	Cahuenga CXX	225	Rancho del Pinole	318	Arroyo de la Alameda	289	Rancho Pinole (Part of)
153	Cahuenga CXXI	226	Rancho del Pinole	319	Arroyo de la Alameda	290	Rancho Pinole (Part of)
154	Cahuenga CXXII	227	Rancho del Pinole	320	Arroyo de la Alameda	291	Rancho Pinole (Part of)
155	Cahuenga CXXIII	228	Rancho del Pinole	321	Arroyo de la Alameda	292	Rancho Pinole (Part of)
156	Cahuenga CXXIV	229	Rancho del Pinole	322	Arroyo de la Alameda	293	Rancho Pinole (Part of)
157	Cahuenga CXXV	230	Rancho del Pinole	323	Arroyo de la Alameda	294	Rancho Pinole (Part of)
158	Cahuenga CXXVI	231	Rancho del Pinole	324	Arroyo de la Alameda	295	Rancho Pinole (Part of)
159	Cahuenga CXXVII	232	Rancho del Pinole	325	Arroyo de la Alameda	296	Rancho Pinole (Part of)
160	Cahuenga CXXVIII	233	Rancho del Pinole	326	Arroyo de la Alameda	297	Rancho Pinole (Part of)
161	Cahuenga CXXIX	234	Rancho del Pinole	327	Arroyo de la Alameda	298	Rancho Pinole (Part of)
162	Cahuenga CXXX	235	Rancho del Pinole	328	Arroyo de la Alameda	299	Rancho Pinole (Part of)
163	Cahuenga CXXXI	236	Rancho del Pinole	329	Arroyo de la Alameda	300	Rancho Pinole (Part of)
164	Cahuenga CXXXII	237	Rancho del Pinole	330	Arroyo de la Alameda	301	Rancho Pinole (Part of)
165	Cahuenga CXXXIII	238	Rancho del Pinole	331	Arroyo de la Alameda	302	Rancho Pinole (Part of)
166	Cahuenga CXXXIV	239	Rancho del Pinole	332	Arroyo de la Alameda	303	Rancho Pinole (Part of)
167	Cahuenga CXXXV	240	Rancho del Pinole	333	Arroyo de la Alameda	304	Rancho Pinole (Part of)
168	Cahuenga CXXXVI	241	Rancho del Pinole	334	Arroyo de la Alameda	305	Rancho Pinole (Part of)
169	Cahuenga CXXXVII	242	Rancho del Pinole	335	Arroyo de la Alameda	306	Rancho Pinole (Part of)
170	Cahuenga CXXXVIII	243	Rancho del Pinole	336	Arroyo de la Alameda	307	Rancho Pinole (Part of)
171	Cahuenga CXXXIX	244	Rancho del Pinole	337	Arroyo de la Alameda	308	Rancho Pinole (Part of)
172	Cahuenga CXL	245	Rancho del Pinole	338	Arroyo de la Alameda	309	Rancho Pinole (Part of)
173	Cahuenga CXLI	246	Rancho del Pinole	339	Arroyo de la Alameda	310	Rancho Pinole (Part of)
174	Cahuenga CXLII	247	Rancho del Pinole	340	Arroyo de la Alameda	311	Rancho Pinole (Part of)
175	Cahuenga CXLIII	248	Rancho del Pinole	341	Arroyo de la Alameda	312	Rancho Pinole (Part of)
176	Cahuenga CXLIV	249	Rancho del Pinole	342	Arroyo de la Alameda	313	Rancho Pinole (Part of)
177	Cahuenga CXLV	250	Rancho del Pinole	343	Arroyo de la Alameda	314	Rancho Pinole (Part of)
178	Cahuenga CXLVI	251	Rancho del Pinole	344	Arroyo de la Alameda	315	Rancho Pinole (Part of)
179	Cahuenga CXLVII	252	Rancho del Pinole	345	Arroyo de la Alameda	316	Rancho Pinole (Part of)
180	Cahuenga CXLVIII	253	Rancho del Pinole	346	Arroyo de la Alameda	317	Rancho Pinole (Part of)
181	Cahuenga CXLIX	254	Rancho del Pinole	347	Arroyo de la Alameda	318	Rancho Pinole (Part of)
182	Cahuenga CL	255	Rancho del Pinole	348	Arroyo de la Alameda	319	Rancho Pinole (Part of)
183	Cahuenga CLI	256	Rancho del Pinole	349	Arroyo de la Alameda	320	Rancho Pinole (Part of)
184	Cahuenga CLII	257	Rancho del Pinole	350	Arroyo de la Alameda	321	Rancho Pinole (Part of)
185	Cahuenga CLIII	258	Rancho del Pinole	351	Arroyo de la Alameda	322	Rancho Pinole (Part of)
186	Cahuenga CLIV	259	Rancho del Pinole	352	Arroyo de la Alameda	323	Rancho Pinole (Part of)
187	Cahuenga CLV	260	Rancho del Pinole	353	Arroyo de la Alameda	324	Rancho Pinole (Part of)
188	Cahuenga CLVI	261	Rancho del Pinole	354	Arroyo de la Alameda	325	Rancho Pinole (Part of)
189	Cahuenga CLVII	262	Rancho del Pinole	355	Arroyo de la Alameda	326	Rancho Pinole (Part of)
190	Cahuenga CLVIII	263	Rancho del Pinole	356	Arroyo de la Alameda	327	Rancho Pinole (Part of)
191	Cahuenga CLIX	264	Rancho del Pinole	357	Arroyo de la Alameda	328	Rancho Pinole (Part of)
192	Cahuenga CLX	265	Rancho del Pinole	358	Arroyo de la Alameda	329	Rancho Pinole (Part of)
193	Cahuenga CLXI	266	Rancho del Pinole	359	Arroyo de la Alameda	330	Rancho Pinole (Part of)
194	Cahuenga CLXII	267	Rancho del Pinole	360	Arroyo de la Alameda	331	Rancho Pinole (Part of)
195	Cahuenga CLXIII	268	Rancho del Pinole	361	Arroyo de la Alameda	332	Rancho Pinole (Part of)
196	Cahuenga CLXIV	269	Rancho del Pinole	362	Arroyo de la Alameda	333	Rancho Pinole (Part of)
197	Cahuenga CLXV	270	Rancho del Pinole	363	Arroyo de la Alameda	334	Rancho Pinole (Part of)
198	Cahuenga CLXVI	271	Rancho del Pinole	364	Arroyo de la Alameda	335	Rancho Pinole (Part of)
199	Cahuenga CLXVII	272	Rancho del Pinole	365	Arroyo de la Alameda	336	Rancho Pinole (Part of)
200	Cahuenga CLXVIII	273	Rancho del Pinole	366	Arroyo de la Alameda	337	Rancho Pinole (Part of)
201	Cahuenga CLXIX	274	Rancho del Pinole	367	Arroyo de la Alameda	338	Rancho Pinole (Part of)
202	Cahuenga CLXX	275	Rancho del Pinole	368	Arroyo de la Alameda	339	Rancho Pinole (Part of)
203	Cahuenga CLXXI	276	Rancho del Pinole	369	Arroyo de la Alameda	340	Rancho Pinole (Part of)
204	Cahuenga CLXXII	277	Rancho del Pinole	370	Arroyo de la Alameda	341	Rancho Pinole (Part of)
205	Cahuenga CLXXIII	278	Rancho del Pinole	371	Arroyo de la Alameda	342	Rancho Pinole (Part of)
206	Cahuenga CLXXIV	279	Rancho del Pinole	372	Arroyo de la Alameda	343	Rancho Pinole (Part of)
207	Cahuenga CLXXV	280	Rancho del Pinole	373	Arroyo de la Alameda	344	Rancho Pinole (Part of)
208	Cahuenga CLXXVI	281	Rancho del Pinole	374	Arroyo de la Alameda	345	Rancho Pinole (Part of)
209	Cahuenga CLXXVII	282	Rancho del Pinole	375	Arroyo de la Alameda	346	Rancho Pinole (Part of)
210	Cahuenga CLXXVIII	283	Rancho del Pinole	376	Arroyo de la Alameda	347	Rancho Pinole (Part of)
211	Cahuenga CLXXIX	284	Rancho del Pinole	377	Arroyo de la Alameda	348	Rancho Pinole (Part of)
212	Cahuenga CLXXX	285	Rancho del Pinole	378	Arroyo de la Alameda	349	Rancho Pinole (Part of)
213	Cahuenga CLXXXI	286	Rancho del Pinole	379	Arroyo de la Alameda	350	Rancho Pinole (Part of)
214	Cahuenga CLXXXII	287	Rancho del Pinole	380	Arroyo de la Alameda	351	Rancho Pinole (Part of)
215	Cahuenga CLXXXIII	288	Rancho del Pinole	381	Arroyo de la Alameda	352	Rancho Pinole (Part of)
216	Cahuenga CLXXXIV	289	Rancho del Pinole	382	Arroyo de la Alameda	353	Rancho Pinole (Part of)
217	Cahuenga CLXXXV	290	Rancho del Pinole	383	Arroyo de la Alameda	354	Rancho Pinole (Part of)
218	Cahuenga CLXXXVI	291	Rancho del Pinole	384	Arroyo de la Alameda	355	Rancho Pinole (Part of)
219	Cahuenga CLXXXVII	292	Rancho del Pinole	385	Arroyo de la Alameda	356	Rancho Pinole (Part of)
220	Cahuenga CLXXXVIII	293	Rancho del Pinole	386	Arroyo de la Alameda	357	Rancho Pinole (Part of)
221	Cahuenga CLXXXIX	294	Rancho del Pinole	387	Arroyo de la Alameda	358	Rancho Pinole (Part of)
222	Cahuenga CXC	295	Rancho del Pinole	388	Arroyo de la Alameda	359	Rancho Pinole (Part of)
223	Cahuenga CXCI	296	Rancho del Pinole	389	Arroyo de la Alameda	360	Rancho Pinole (Part of)
224	Cahuenga CXCII	297	Rancho del Pinole	390	Arroyo de la Alameda	361	Rancho Pinole (Part of)
225	Cahuenga CXCIII	298	Rancho del Pinole	391	Arroyo de la Alameda	362	Rancho Pinole (Part of)
226	Cahuenga CXCIV	299	Rancho del Pinole	392	Arroyo de la Alameda	363	Rancho Pinole (Part of)
227	Cahuenga CXCV	300	Rancho del Pinole	393	Arroyo de la Alameda	364	Rancho Pinole (Part of)
228	Cahuenga CXCVI	301	Rancho del Pinole	394	Arroyo de la Alameda	365	Rancho Pinole (Part of)
229	Cahuenga CXCVII	302	Rancho del Pinole	395	Arroyo de la Alameda	366	Rancho Pinole (Part of)
230	Cahuenga CXCVIII	303	Rancho del Pinole	396	Arroyo de la Alameda	367	Rancho Pinole (Part of)
231	Cahuenga CXCIX	304	Rancho del Pinole	397	Arroyo de la Alameda	368	Rancho Pinole (Part of)
232	Cahuenga CC	305	Rancho del Pinole	398	Arroyo de la Alameda	369	Rancho Pinole (Part of)
233	Cahuenga CCI	306	Rancho del Pinole	399	Arroyo de la Alameda	370	Rancho Pinole (Part of)
234	Cahuenga CCII	307	Rancho del Pinole	400	Arroyo de la Alameda	371	Rancho Pinole (Part of)
235	Cahuenga CCIII	308	Rancho del Pinole	401	Arroyo de la Alameda	372	Rancho Pinole (Part of)
236	Cahuenga CCIV	309	Rancho del Pinole	402	Arroyo de la Alameda	373	Rancho Pinole (Part of)
237	Cahuenga CCV	310	Rancho del Pinole	403	Arroyo de la Alameda	374	Rancho Pinole (Part of)
238	Cahuenga CCVI	311	Rancho del Pinole	404	Arroyo de la Alameda	375	Rancho Pinole (Part of)
239	Cahuenga CCVII	312	Rancho del Pinole	405	Arroyo de la Alameda	376	Rancho Pinole (Part of)
240	Cahuenga CCVIII	313	Rancho del Pinole	406	Arroyo de la Alameda	377	Rancho Pinole (Part of)
241	Cahuenga CCIX	314	Rancho del Pinole	407	Arroyo de la Alameda	378	Rancho Pinole (Part of)
242	Cahuenga CCX	315	Rancho del Pinole	408	Arroyo de la Alameda	379	Rancho Pinole (Part of)
243	Cahuenga CCXI	316	Rancho del Pinole	409	Arroyo de la Alameda	380	Rancho Pinole (Part of)
244	Cahuenga CCXII	317	Rancho del Pinole	410	Arroyo de la Alameda	381	Rancho Pinole (Part of)
245	Cahuenga CCXIII	318	Rancho del Pinole	411	Arroyo de la Alameda	382	Rancho Pinole (Part of)
246	Cahuenga CCXIV	319	Rancho del Pinole	412

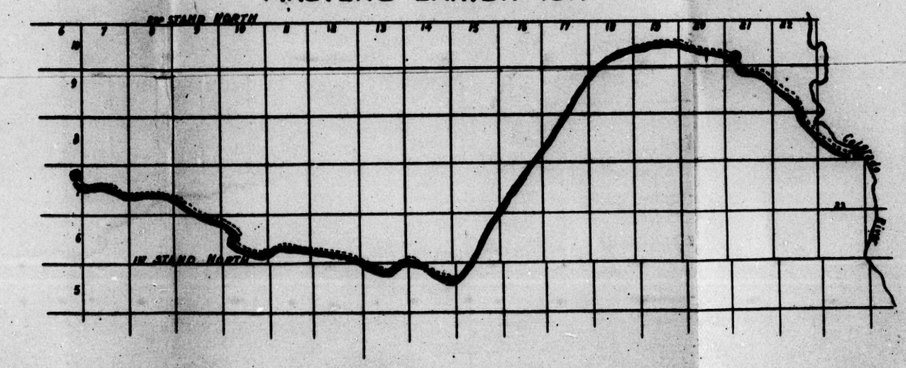
<Respondents' Exhibit "C">

No. 1375.
U. States.
v.
S.P.R.R.Co.
et al.
p. 88.
Respondent's Exhibit "C."









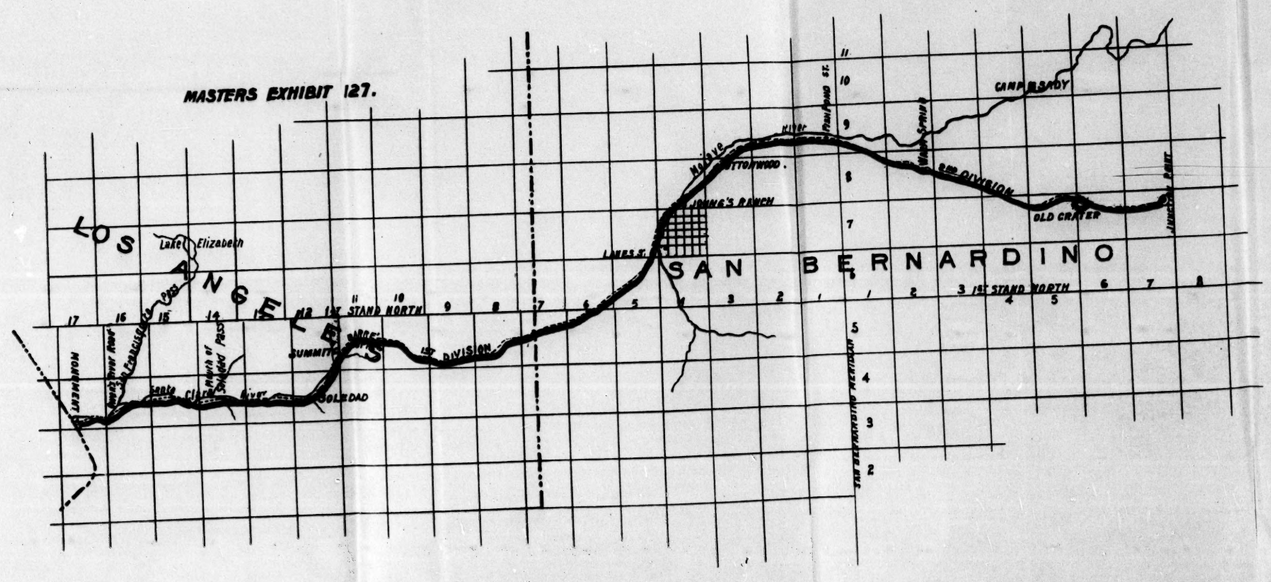
Respondent's Exhibit 6

MASTER'S EXHIBIT 130.

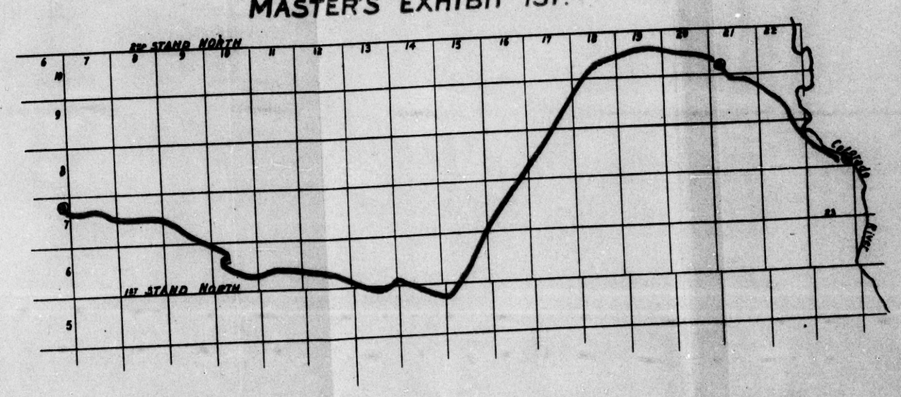
No. 1374.
U. States
v.
S. P. R.R. Co.
Def.
p. 76

MASTERS EXHIBIT, 126

MASTERS EXHIBIT 127.



MASTER'S EXHIBIT 131.



To Hon. [illegible] Secretary of the Interior.

and Hon. [illegible] Commissioner of General Land Office.

Please [illegible] to take notice that this Map is [illegible] by the Company of [illegible] Virginia in the office of the Commissioner of the General Land Office for the purpose of designating by the heavy red line thereon the line of Railroad as near as may be "from a point at or near Fahala Angeles to the Pacific Railroad at or near the Colorado River" and the Pacific Railroad Company in pursuance of the power and authority by the 23rd Section of the Act of the Congress of the United States entitled "An Act to aid in the construction of a Railroad and Telegraph from the Texas Pacific Railroad Company, and to aid in the construction of its road" approved March 3rd 1871, and in pursuance of the provisions of the Act of said 23rd Section, and for the purpose of obtaining the benefit of the Provisions

MAP
CALIFORNIA & NEVADA
to accompany
REPORT of COMMISSIONER
GENERAL LAND OFFICE
1866.

No. 1374.
U States
vs
S.P.R.R. Co.
Def.

p. 345

Filed January 10th 1891
Wm M Van Dyke
Clerk

U.S. Circuit Court
Southern Dist of Cal
No. 77
Exhibit 21

[illegible] by way of [illegible] by the said [illegible] to said Company [illegible] act to incorporate [illegible] and for other [illegible] 1866 [illegible] of said acts of [illegible] the Groveland [illegible] Southern Pacific [illegible] Company

[illegible]
Commissioner

SKIYOUI
5th Stand North.
AMATH
TRINITY CO.
SHASTA
Stand North
LASSEN
Stand North
5th Stand North.
PLUMAS
5th Stand North
4th Stand North.
SIERRA
Desert
Traverse Line
3rd Stand North.
EL DORADO
2nd Stand North.
ALPINE
CALAVERAS
TUOLUMNE
MARIPOSA
Stand South
7th Stand North.
Humboldt Lake
Humboldt R.
Walker River
Carson R.
Truckee R.
Pyramid Lake
Farallones Is. L.H.
Point Arena
Point Reyes
Point San Pedro
Point Bonita
Alcatraz Is.
Angel Is.
Yerba Buena Is.
Goat Is.
Lime Point
Fort Point
Black Point
Presidio
Mission Dolores
Rincon Point
Meiggs Wharf
Clark's Point
Long Wharf
Central Pacific R.R.
Oakland
Alameda
San Antonio
San Leandro
San Lorenzo
Haywards
Mission San Jose
Alvarado
Centreville
Pacific Ocean

REFERENCES.

- Seat of Surveyor Generals Office.
- Seat of Land Offices.
- Land Grant Rail Roads.
- Light House Reservations.
- Coal Mines.
- Asphaltum Wells.
- Salt Ponds.

Seat of Land Offices.

Land Grant Rail Roads.

Light House Reservations.

Coal Mines.

Asphaltum Wells.

Salt Ponds.

TULARE CO.

INYO CO.

Tulare Lake

Owens Lake

Potos District

State Range Dest.

List of Private Grants finally surveyed.

1 San Buenaventura.
2 El Paso de Cañon de los Berendos
3 La Brea rica, Cañada
4 Las Flores
5 Los Sauces
6 Rio de los Molinos
7 Sespe
8 Cayey
9 Arroyo Chico
10 Parrell's part of / Williams's
11 " (part of Rob's of J. Peter dec'd)
12 " (part of Rest of R.A. Parnell dec'd)
13 Jurupa
14 Llano Seco
15 Agua Prieta
16 Roquez
17 Larkin's Children
18 Fernandez
19 Roga
20 Huerta
21 Nacas
22 Cahuc
23 Rincon
24 Johnson's Rancho
25 Bonal
26 Rincon de Musalacan
27 Tassaro
28 Sanjorge
29 Malcom's or Mariani's part of Cook and Hap
30 " (part of T. Knight)
31 " (part of Jose Sanchez)
32 Cahuenga
33 Cuyamo
34 Cañada de Capay
35 Guasisal
36 Rio Jesus Maria
37 Del Paso
38 San Juan
39 Rio de los Americanos
40 Los Putos
41 Rio de los Putos
42 Los Putos
43 Locallomi
44 Sanjon de Santa Rosa
45 Rincon de Santa Rosa
46 Julio Carrillo,
Miguel and Eduardo,
Jacinto de Rosa Mallagh's,
John Sinclair's and
Jacinto Rodriguez.
47 Castro
48 Cayenos
49 Tejones
50 Chiquito
51 Tolenas
52 Soscon
53 Pulmoy
54 Part of Pinole Rancho Rincon de los Cerritos
55 Negar and the following confirmed parts
Lorenzo Sunbrath,
W.M. Estudillo,
Julius K. Lunt,
Salvador Vallejo's and
Otto H. Franck's
57 Huichica
58 Las de Sonoma / M.G Vallejo's
59 Rincon de Sonoma / Agustin Haraszthy
60 Part of Agua Caliente / Wilkinson's
61 " " / Thornton's
62 Petaluma Rancho
63 Laguna de San Antonio
64 " " / Benjamin R. Buckelew's
65 " " / James Black's
66 " " / D. Frank and W. Hargrave's
67 Analgisio and the following confirmed parts
George W. Cornwall's,
Louis B. Watkins',
Marvin P. Snowden's,
Pedro J. Vasquez' and
Joshua S. Brackett's,
68 Puntas de los Reyes
69 Punta de los Reyes / Sobrante /
70 Tehama y Bonilores / H. Garcia /
71 " " / S. Phelps /
72 Las Baulines
73 Sausalito
74 Corte Madera del Presidio
75 Punta de Quentin
76 Cañada de Herrera
77 Cañada de Herrera
78 San Geronimo
79 San Pedro, Santa Margarita y las Gallinas
80 Alto / San Rafael / Church property /
81 San José
82 Novato
83 Corte Madera de Novato
84 Olompali
85 Las Ulpinos
86 Bolgica de los Mogchumnes
87 Arroyo Seco / A. Pico /
88 Rancheria del Rio Estanislao
89 Thompson's Rancho
90 Campo de los Franceses
91 Molinos
92 Monte del Diablo
93 Arroyo de los Pinos y Bolbones
94 Las Lagunas c/ los Palos Colorados
95 Acalanes
96 La Boca de la Cañada de Pinole
97 Las Juntas
98 Cañada del Hambre
99 El Pinole
100 San Pablo
101 Northern part of San Antonio
102 Part of San Antonio / A.M. Peralta /
103 " " / Ignacio Peralta /
104 San Leandro
105 San Lorenzo / Barbara Soto /
106 Temescal
107 Encinal de San Antonio
108 Arroyo de la Alameda
109 El Potrero de los Cerritos
110 Lots in Mun.ty San José / Church property /
111 Agua Caliente / P. Higuera /
112 Las Tularcitos / J. Higuera /
113 Milpitas
114 Ranchos de los Esteros / Ellis & White's /
115 " " / Rafael Alviso /
116 " " / E. Perryess /
117 Potrero
118 Part of Pastoria de las Borregas / M. Murphy
119 Pastoria and the following confirmed parts
Wilkinson's,
Campbell's and
Teigh's.
120 Rancho de San Francisquito / Tomá S. Robles /
121 Rancho de Arroyo de San Francisquito
122 San Francisquito / M. Cisneros de Rodriguez /
123 Corte de Madera
124 Cañada de Raymundo
125 San Pedro
126 Feliz / Dominguez Feliz /
127 San Mateo
128 Pulgas, Buri
129 Cañada de Guadalupe, La Visitacion, y Rodeo Viejo
130 Part of Cañada de Guadalupe y Rodeo Viejo and Pastoria
131 Rincon de los Salines
132 San Miguel
133 Lots at Mpa. Dolores / Church property /
134 Reserve on Islands / Part of land at Mis. Dolores /
135 Part of land at Mis. Dolores / Cañada Larga at Pulgas
136 Lots in San Francisco y el Potrero et al /
137 Laguna de la Merced
138 San Pedro / P. Sanchez /
139 Corral de Tierra / Rest of / G. Palomares /
140 " " / Vicente Vasquez /
141 Sobrante (a-tra)
142 San Antonio or Pescadero
143 Arroyo Hondo
144 Corte Madera del Año Viejo
145 Arroyo de la Purisima, Cañada de Verde y Punta de Año Nuevo
146 Arroyo de Sanchez
147 Rincon de San Mateo
148 Arroyo de Pilarcitos
149 Canada de Raymundo
150 Rancho de Arroyo y Moro Cojo
151 Rancho de Arroyo y Moro Cojo / Salvador Castro /
152 Rancho de Arroyo y Moro Cojo / Refugio Soto /
153 Rancho de Arroyo y Moro Cojo / Antonio Soto /
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418 El Rincon / Teodoro Arellanes /
419 Cañada de San Miguelito
420 Santa Ana / Ayuela et al /
421 El Tigre
422 Cuesta
423 Lands belonging to Mis.n of Santa Barbara
424 " " / Church property /
425 Lot in Mission of San Buenaventura (J.T. Dye)
426 San Miguel / R. Olivas and F. Lorenzana /
427 Sanjon de los Berryesa / Castro,
428 Cañada Larga
429 Laguna Seca
430 Arroyo Grande
431 Huasna
432 Cañada de los Alisos
433 Orcutt
434 Mission Viejo of Los Pinos
435 Mis.n Viejo / Church property /
436 Potrero de San Juan Capistrano
437 Trabuco
438 Onofre
439 Las Flores
440 Los Alamos
441 Corral de Quati
442 Laguna / Octaviano Gutierrez /
443 Los Alamos
444 Cuesta de
445 Jesus Maria
446 Mission La Purisima / Santa Rosa Rancho
447 Cañada de los Osos
448 Nacimiento
449 Las Pecitas
450 Asuncion
451 Santa Margarita
452 Cañada de Pecho y Islay
453 Laguna / Church property /
454 Mission Lands / San Luis Obispo Church property
455 Rancho Cañada de los Osos and Pecho y Islay
456 Potrero de San Luis Obispo
457 Asuncion
458 Alamo Pintado
459 Los Berros
460 Los Coyotes
461 Los Alamitos
462 La Bolsa Chica
463 Las Bolsas
464 Santa Paula y Saticoy
465 Santa Clara del Norte
466 Las Posas
467 Calleguas
468 Guadalasca
469 El Conejo
470 Simi
471 Rancho Nuestra Señora de Refugio
472 Rancho el Tequepis
473 Nopalera
474 Rincon
475 Las Llagas
476 Las Positas
477 Rancho Nuestra Señora de la Concepcion
478 Rancho Nuestra Señora del Refugio
479 Cañada del Corral
480 Las Positas
481 Las Cañas / Maria Cleto Ortega /
482 Rincon de la Punta del Monte
483 San Vicente
484 Las Cañas / Maria Soberanes /
485 El Mission Soledad
486 2 Tracts of Mis.n Soledad / Church property /
487 Paraje de Sanchez
488 Guadalupe
489 Buena Vista / M. Molarin Alt.z /
490 El Toro
491 Cañada Seca
492 Nacimiento
493 Cañada de Pinole
494 Cañada de Pala
495 San Felipe de las Animas
496 Laguna Seca / L.C. Bull et. al /
497 Santa Teresa / Augustin Bernal / et al /
498 San Juan Bautista / J.A. Narvaez /
499 Las Capitanillos / Charles Pescoll /
500 San Vicente / Maria J. Bernal, Berryessa et al /
501 Los Cruces
502 Ojo Agua de la Coche
503 San Francisco de las Llagas
504 La Polka
505 San Isidro / Maria Clara Ortega /
506 San Isidro / Quintin Ortega /
507 Pequisquite
508 Lagunitas Muertas
509 Juristac
510 Las Animas
511 Salsa
512 Salsipuedes
513 Bolsa del Pajaro
514 San Andreas Gulch or Cantua Creek
515 Las Garzolas
516 Chaupaul Augmentation
517 Aptos
518 Soquel
519 Arroyo del Rodeo
520 Mud Lands of Santa Cruz / Church property /
521 Tres Ojos de Agua / near Santa Cruz /
522 Refugio
523 Cañada del Rincon and Mission Lands of Santa Cruz
524 La Carbonera
525 San Augustin
526 Arroyo Grande
527 Huasna
528 Cañada de los Osos
529 Orcutt
530 Mission Viejo of Los Pinos
531 Mis.n Viejo / Church property /
532 Potrero de San Juan Capistrano
533 Trabuco
534 Onofre
535 Las Flores
536 Los Alamos
537 Corral de Quati
538 Laguna / Octaviano Gutierrez /
539 Los Alamos
540 Cuesta de
541 Jesus Maria
542 Mission La Purisima / Santa Rosa Rancho
543 Cañada de los Osos and Pecho y Islay
544 Laguna / Church property /
545 Mission Lands / San Luis Obispo Church property
546 Potrero de San Luis Obispo
547 Asuncion
548 Alamo Pintado
549 Los Berros
550 Los Coyotes
551 Los Alamitos
552 La Bolsa Chica
553 Las Bolsas
554 Santa Paula y Saticoy
555 Santa Clara del Norte
556 Las Posas
557 Calleguas
558 Guadalasca
559 El Conejo
560 Simi
561 Rancho Nuestra Señora de Refugio
562 Rancho el Tequepis
563 Nopalera
564 Rincon
565 Las Llagas
566 Las Positas
567 Rancho Nuestra Señora de la Concepcion
568 Rancho Nuestra Señora del Refugio
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571 Las Cañas / Maria Cleto Ortega /
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573 San Vicente
574 Las Cañas / Maria Soberanes /
575 El Mission Soledad
576 2 Tracts of Mis.n Soledad / Church property /
577 Paraje de Sanchez
578 Guadalupe
579 Buena Vista / M. Molarin Alt.z /
580 El Toro
581 Cañada Seca
582 Nacimiento
583 Cañada de Pinole
584 Cañada de Pala
585 San Felipe de las Animas
586 Laguna Seca / L.C. Bull et. al /
587 Santa Teresa / Augustin Bernal / et al /
588 San Juan Bautista / J.A. Narvaez /
589 Las Capitanillos / Charles Pescoll /
590 San Vicente / Maria J. Bernal, Berryessa et al /
591 San Ysidro
592 San Benito
593 Cañada de la Brea
594 San Lorenzo / Rancho Nuestra Señora de la Soledad
595 Addition to Santa Ana del Chino
596 Rancho Santa del Chino
597 Rincon de la Brea
598 Los Nogales
599 Los Tres Ranchos
600 Tract of land / Juana Pablo de Jesus Courtney
601 Rancho de Cuddy
602 Tract of land / Gabriel Moulin / Church property
603 Potrero de Felipe Lugo
604 Potrero Grande
605 Los Alamos
606 San Jacinto / A.M. Lugo /
607 Pueblo lands of the City of Los Angeles
608 La Cienega
609 San Jose de Buenos Ayres
610 Las Palmas
611 Las Palos Verdes
612 San Pedro / M. Dominguez, et al /
613 Tajiguas
614 La Goleta
615 Los Dos Pueblos
616 Las Positas / La Calera
617 Island / Santa Rosa.
618 Island / Santa Cruz.
619 Santa Barbara
620 La Zaleya.
621 El Tigre.
622 Cuyas.
623 U.S. Reservation on Benicia.
624 U.S. Reservation. #77.

Indians Reservations
A. Nome Lackee.
B. Nome Cult.
C. Potter River.

Explanation | ——— Surveys executed and returned to this Office
S.S.S.S.S. Townships subdivided into Sections and returns made to this Office

Scale 18 Miles to an inch.

Surveyor General's Office
San Francisco California, June 30th 1863

L. Upson
U.S Surv.r Gen.l Cal

123 122 121 120 119

No. 1374
U. States
vs
Sorrs
et al.
p. 347

Filed January 10th - 1891
Mon. McSandy Ke
Clerk

PLAT

SHOWING THE LOCATION OF THE ROUTE

OF THE

SOUTHERN PACIFIC RAILROAD

(OF CALIFORNIA.)

Under an Act granting Lands to aid in the construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast, by the Southern Route.

Approved –

Scale, Eighteen Miles to One Inch.

U. S. Circuit Court,
Southern Dist. of Cal.
United States of America
vs
Southern Pacific Railroad Co
Mandamus Docket
Filed January 5th 1891
Geo. H. Batchelder
Master and Examiner in Chancery

No. 1774
No. 178
(37)

Office Southern Pacific Railroad Company.
San Francisco California

We hereby certify that this Map indicates the route of the Preliminary Survey of the Southern Pacific Railroad and as such was adopted and approved by the Board of Directors of the Southern Pacific Railroad Company, at a meeting held at their Office, in the City of San Francisco on the 22nd day of September A.D. 1866.

In witness whereof we have hereunto set our hands and seals this 29th day of September A.D. 1866.

T. H. Phelps — President Southern Pacific Railroad Company
Chas. M. Fox — Secretary pro tem Southern Pacific R.R. Co
Wm. H. Lewis — Chief Engineer Southern Pacific R.R.

See letter to Stockton Office of Sept 25th 1868 relative to even sections within the 20 & 30 miles limits.

Explanations.

Route of the Southern Pacific Railroad.
Line of 20 miles, limit for 10 Alternate Sections.
Line of 10 miles additional for sections in lieu of Granted
Line of 20 miles additional for sections in lieu of Alienated
Line of 5 miles additional, for possible Changes of location

1st Stand North
2nd Stand North
3rd Stand North
4th Stand North
5th Stand North
6th Stand North
7th Stand North
1st Stand South
2nd Stand South
3rd Stand South
4th Stand South
5th Stand South
6th Stand South
7th Stand South
8th Stand South

Humboldt Lake
Pyramid Lake
Honey Lake
Shasta
Marysville
Sacramento
Stockton
Visalia
Los Angeles
Colorado River
Gila River
Mojave Desert
Colorado Desert
Owens River
Walker Pass
Tejon Pass
Soledad
Monterey
San Francisco
San Jose
Gilroy
Santa Cruz
Santa Barbara
Santa Monica
San Diego
San Bernardino
Fort Yuma
Fort Tejon
Fort Mojave
Fort Gaston
Fort Crook
Fort Reading
Fort Bidwell
Fort Klamath
Fort Boise
Fort Hall
Fort Bridger
Fort Laramie
Fort Kearney
Fort Leavenworth
Fort Riley
Fort Scott
Fort Gibson
Fort Smith
Fort Arbuckle
Fort Belknap
Fort Chadbourne
Fort Mason
Fort Inge
Fort Clark
Fort Duncan
Fort Brown
Fort Ringgold
Fort Ripley
Fort Abercrombie
Fort Pembina
Fort Garry
Fort Snelling
Fort Dodge
Fort Des Moines
Fort Madison
Fort Leavenworth
Fort Riley
Fort Scott
Fort Gibson
Fort Smith
Fort Arbuckle
Fort Belknap
Fort Chadbourne
Fort Mason
Fort Inge
Fort Clark
Fort Duncan
Fort Brown
Fort Ringgold
Fort Ripley
Fort Abercrombie
Fort Pembina
Fort Garry
Fort Snelling
Fort Dodge
Fort Des Moines
Fort Madison

PACIFIC
OCEAN

Explanations.

Route of the Southern Pacific Railroad.

Line of 20 miles, limit for 10 Alternate Sections.

Line of 10 miles additional, for selections in lieu of Grants, &c.

Line of 20 miles additional, for selections in lieu of Mineral Lands.

Line of 5 miles addition, for possible Change of location.

List of Private Grants finally surveyed.

1	San Buenaventura.	81	Ex-Mission of San Buenaventura [in part]	201	Pastoria, Concepcion	256	Panoche Pinos
2	Mission Cañon de Santa Ines [Branches]		George W. Cornwall.	202	Portrero de Andres [Pedro Mesa]	257	Sausalito [and part of
3	San Francisco, Ojai		Lewis A. Maddux.	203	- - - (Wm. Dana.)	258	Las Flores
4	Las Flores		Martin H. Connolly &	204	Quico	259	Cañada de Capay
5	Las Cruces		Pedro J. Vasquez. and	205	Rinconada de los Gatos	260	Cañada de la Segunda
6	San Julian [Mission]		Antonio Lopez. [Mission]	206	Rancho de San Luis Rey [Branches]	261	Pozo [of land.] [Mexican]
7	San Carlos [Mission]	82	Rancho de los Alisos	207	El Potrero de San Carlos	262	El Potrero de San Carlos
8	Las Virgenes	83	Rancho de los Nogales [Lukenbeal]	208	El Potrero de Santa Clara	263	Las Positas [Portrero de San Francisco]
9	Arroyo Chico	84	Temescal [Antonio Del Valle et al.]	209	Santa Teresa [Antonio Suñol et al.]	264	San Francisquito [San Francisco]
10	Tornell [part of J. Williams]		(Rafael L.)	210	Pala	265	San Pedro [Rancho de los Nietos]
11	- - [part of Samuel J. Bitter and]	85	La Brea Ranch	211	Potrero [Rancho de Santa Clara]	266	El Alisal
12	- - [part of Wm. M. Rutherford and]		Ensenada	212	Cañada de Pala	267	Arroyo Seco [Isabel Brown]
13	Jacumba	86	Cañada de los Pinos [Rancho de Santa Ana]	213	Rancho San Felipe de los Coyotes	268	Pozo Salado [Pedro]
14	Llano Seco	87	Cañada de Guadalupe [Rancho de Santa Ana]	214	Rancho San Jacinto [Antonio Del Valle et al.]	269	Las Juntas [Pedro Sainsevain]
15	Agua Prieta	88	Cañada de Moro y Cayucos [Rancho de Santa Ana]	215	Rancho Santa Rosa [Augustin Bandini et al.]	270	San Jacinto [Sobrantes]
16	Espada	89	Cañada de Pinole [Rancho de Santa Ana]	216	Rancho Las Capitanillas [Cherokee Pascual]	271	- - [E. Sanchez]
17	Sanchez Children	90	Canada de Raymundo [Rancho de Santa Ana]	217	Rancho Nuestra Señora Del Refugio [Rancho de Santa Ana]	272	San Antonio [Rancho de Santa Ana]
18	Pena - dez	91	Canada de Santa Rosa [Rancho de Santa Ana]	218	Rancho Las Virgenes [Rancho de Santa Ana]	273	San Antonio [Rancho de Santa Ana]
19	Bega	92	Canada de Santa Rosa [Rancho de Santa Ana]	219	Rancho Las Virgenes [Rancho de Santa Ana]	274	San Antonio [Rancho de Santa Ana]
20	Harmer	93	Canada de Santa Rosa [Rancho de Santa Ana]	220	Rancho Las Virgenes [Rancho de Santa Ana]	275	San Antonio [Rancho de Santa Ana]
21	Juarez	94	Canada de Santa Rosa [Rancho de Santa Ana]	221	Rancho Las Virgenes [Rancho de Santa Ana]	276	San Antonio [Rancho de Santa Ana]
22	Cebes	95	Canada de Santa Rosa [Rancho de Santa Ana]	222	Rancho Las Virgenes [Rancho de Santa Ana]	277	San Antonio [Rancho de Santa Ana]
23	New Helvetia	96	Canada de Santa Rosa [Rancho de Santa Ana]	223	Rancho Las Virgenes [Rancho de Santa Ana]	278	San Antonio [Rancho de Santa Ana]
24	Jansen's Rancho	97	Canada de Santa Rosa [Rancho de Santa Ana]	224	Rancho Las Virgenes [Rancho de Santa Ana]	279	San Antonio [Rancho de Santa Ana]
25	Grand	98	Canada de Santa Rosa [Rancho de Santa Ana]	225	Rancho Las Virgenes [Rancho de Santa Ana]	280	San Antonio [Rancho de Santa Ana]
26	Rincon de Musalacon	99	Canada de Santa Rosa [Rancho de Santa Ana]	226	Rancho Las Virgenes [Rancho de Santa Ana]	281	San Antonio [Rancho de Santa Ana]
27	Pacheco	100	Canada de Santa Rosa [Rancho de Santa Ana]	227	Rancho Las Virgenes [Rancho de Santa Ana]	282	San Antonio [Rancho de Santa Ana]
28	Sobrante	101	Canada de Santa Rosa [Rancho de Santa Ana]	228	Rancho Las Virgenes [Rancho de Santa Ana]	283	San Antonio [Rancho de Santa Ana]
29	Pulgas [Rancho de las Pulgas]	102	Canada de Santa Rosa [Rancho de Santa Ana]	229	Rancho Las Virgenes [Rancho de Santa Ana]	284	San Antonio [Rancho de Santa Ana]
30	Milpitas [Rancho de las Milpitas]	103	Canada de Santa Rosa [Rancho de Santa Ana]	230	Rancho Las Virgenes [Rancho de Santa Ana]	285	San Antonio [Rancho de Santa Ana]
31	Cañada [part of Rancho de las Pulgas]	104	Canada de Santa Rosa [Rancho de Santa Ana]	231	Rancho Las Virgenes [Rancho de Santa Ana]	286	San Antonio [Rancho de Santa Ana]
32	- - [part of Rancho de las Pulgas]	105	Canada de Santa Rosa [Rancho de Santa Ana]	232	Rancho Las Virgenes [Rancho de Santa Ana]	287	San Antonio [Rancho de Santa Ana]
33	Cañada [part of Rancho de las Pulgas]	106	Canada de Santa Rosa [Rancho de Santa Ana]	233	Rancho Las Virgenes [Rancho de Santa Ana]	288	San Antonio [Rancho de Santa Ana]
34	Guadalupe	107	Canada de Santa Rosa [Rancho de Santa Ana]	234	Rancho Las Virgenes [Rancho de Santa Ana]	289	San Antonio [Rancho de Santa Ana]
35	Rancho de Las Americanos	108	Canada de Santa Rosa [Rancho de Santa Ana]	235	Rancho Las Virgenes [Rancho de Santa Ana]	290	San Antonio [Rancho de Santa Ana]
36	Laguna de la Merced	109	Canada de Santa Rosa [Rancho de Santa Ana]	236	Rancho Las Virgenes [Rancho de Santa Ana]	291	San Antonio [Rancho de Santa Ana]
37	Rincon de San Mateo	110	Canada de Santa Rosa [Rancho de Santa Ana]	237	Rancho Las Virgenes [Rancho de Santa Ana]	292	San Antonio [Rancho de Santa Ana]
38	Rincon de San Francisquito	111	Canada de Santa Rosa [Rancho de Santa Ana]	238	Rancho Las Virgenes [Rancho de Santa Ana]	293	San Antonio [Rancho de Santa Ana]
39	Ex-Mission of San Fernando [in part]	112	Canada de Santa Rosa [Rancho de Santa Ana]	239	Rancho Las Virgenes [Rancho de Santa Ana]	294	San Antonio [Rancho de Santa Ana]
40	Providencia	113	Canada de Santa Rosa [Rancho de Santa Ana]	240	Rancho Las Virgenes [Rancho de Santa Ana]	295	San Antonio [Rancho de Santa Ana]
41	Ex-Mission of San Fernando [in part]	114	Canada de Santa Rosa [Rancho de Santa Ana]	241	Rancho Las Virgenes [Rancho de Santa Ana]	296	San Antonio [Rancho de Santa Ana]
42	Ex-Mission of San Fernando [in part]	115	Canada de Santa Rosa [Rancho de Santa Ana]	242	Rancho Las Virgenes [Rancho de Santa Ana]	297	San Antonio [Rancho de Santa Ana]
43	Ex-Mission of San Fernando [in part]	116	Canada de Santa Rosa [Rancho de Santa Ana]	243	Rancho Las Virgenes [Rancho de Santa Ana]	298	San Antonio [Rancho de Santa Ana]
44	Ex-Mission of San Fernando [in part]	117	Canada de Santa Rosa [Rancho de Santa Ana]	244	Rancho Las Virgenes [Rancho de Santa Ana]	299	San Antonio [Rancho de Santa Ana]
45	Ex-Mission of San Fernando [in part]	118	Canada de Santa Rosa [Rancho de Santa Ana]	245	Rancho Las Virgenes [Rancho de Santa Ana]	300	San Antonio [Rancho de Santa Ana]
46	Ex-Mission of San Fernando [in part]	119	Canada de Santa Rosa [Rancho de Santa Ana]	246	Rancho Las Virgenes [Rancho de Santa Ana]	301	San Antonio [Rancho de Santa Ana]
47	Ex-Mission of San Fernando [in part]	120	Canada de Santa Rosa [Rancho de Santa Ana]	247	Rancho Las Virgenes [Rancho de Santa Ana]	302	San Antonio [Rancho de Santa Ana]
48	Ex-Mission of San Fernando [in part]	121	Canada de Santa Rosa [Rancho de Santa Ana]	248	Rancho Las Virgenes [Rancho de Santa Ana]	303	San Antonio [Rancho de Santa Ana]
49	Ex-Mission of San Fernando [in part]	122	Canada de Santa Rosa [Rancho de Santa Ana]	249	Rancho Las Virgenes [Rancho de Santa Ana]	304	San Antonio [Rancho de Santa Ana]
50	Ex-Mission of San Fernando [in part]	123	Canada de Santa Rosa [Rancho de Santa Ana]	250	Rancho Las Virgenes [Rancho de Santa Ana]	305	San Antonio [Rancho de Santa Ana]
51	Ex-Mission of San Fernando [in part]	124	Canada de Santa Rosa [Rancho de Santa Ana]	251	Rancho Las Virgenes [Rancho de Santa Ana]	306	San Antonio [Rancho de Santa Ana]
52	Ex-Mission of San Fernando [in part]	125	Canada de Santa Rosa [Rancho de Santa Ana]	252	Rancho Las Virgenes [Rancho de Santa Ana]	307	San Antonio [Rancho de Santa Ana]
53	Ex-Mission of San Fernando [in part]	126	Canada de Santa Rosa [Rancho de Santa Ana]	253	Rancho Las Virgenes [Rancho de Santa Ana]	308	San Antonio [Rancho de Santa Ana]
54	Ex-Mission of San Fernando [in part]	127	Canada de Santa Rosa [Rancho de Santa Ana]	254	Rancho Las Virgenes [Rancho de Santa Ana]	309	San Antonio [Rancho de Santa Ana]
55	Ex-Mission of San Fernando [in part]	128	Canada de Santa Rosa [Rancho de Santa Ana]	255	Rancho Las Virgenes [Rancho de Santa Ana]	310	San Antonio [Rancho de Santa Ana]

Explanation { ——— Surveys executed and returned to this Office. S.S.S.S.S. Townships subdivided, & to Sections and returns made to this Office.

Scale 18 Miles to an inch.

Surveyor General's Office
San Francisco California, June 30th 1863

L. Upson
U.S. Surv'r Gen'l Cal.

U. S. Land Office
San Francisco Cal
September 8. 1866.

I hereby certify that a duplicate Map of the State of California similar in all respects that she; essential as near as I can judge to the Map, has this day been filed in the Office

James M. Shannon
Register

Santa Barbara Channel

Santa Cruz Island

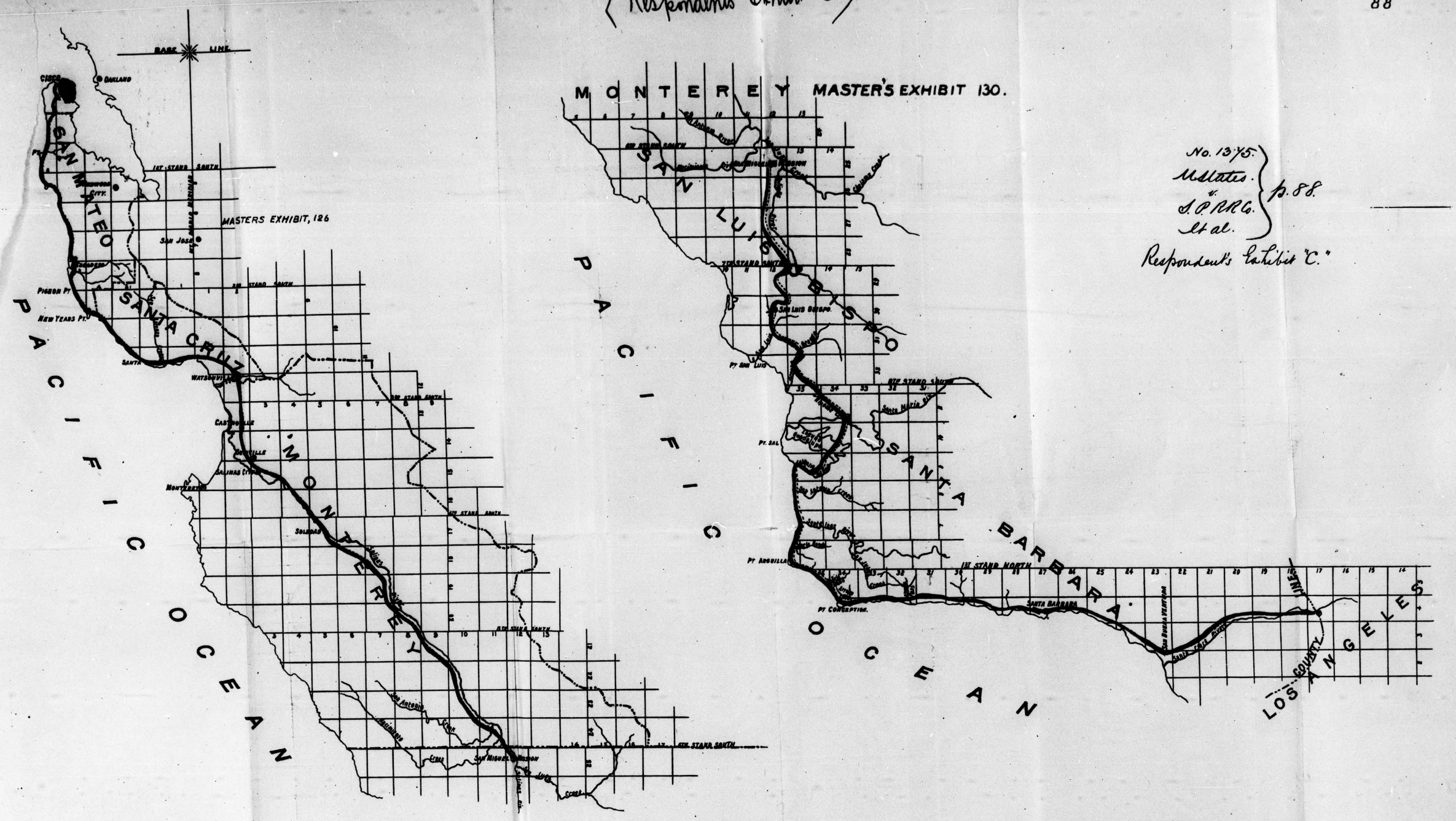
Santa Rosa Island

Mexican Boundary

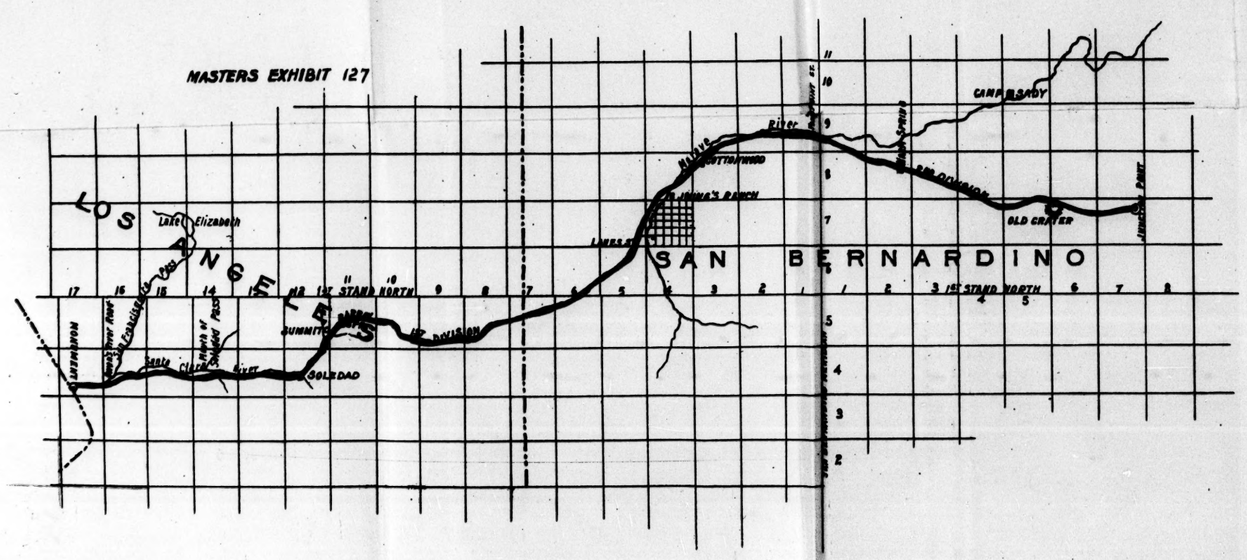
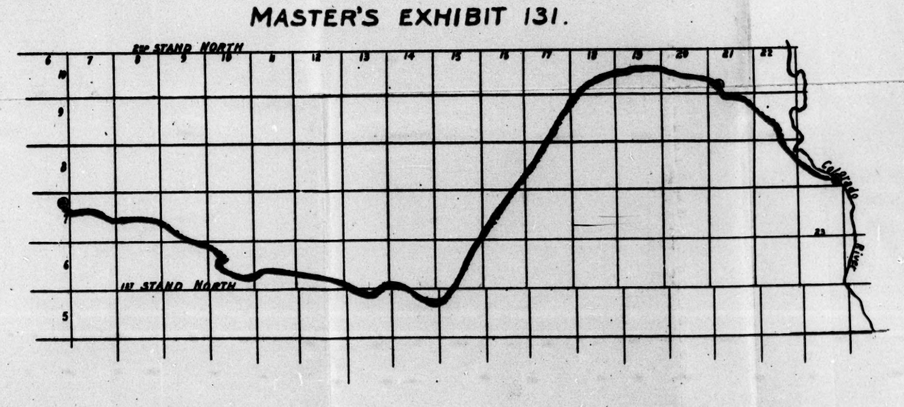
⟨Respondents' Exhibit "C"⟩

No. 1375.
U. States
v.
S.P.R.R.Co.
et al.
p. 88.
Respondent's Exhibit "C."

MONTEREY MASTER'S EXHIBIT 130.



MASTERS EXHIBIT 127



MASTER'S EXHIBIT 131.